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A  
CONTINUATION  
OF THE  
**Practical Register,**  
IN TWO PARTS.

Wherein are contained  
Many RULES of COURT, and  
also Practical CASES.

WITH  
An ALPHABETICAL TABLE of the  
HEADS, at the End of each Part.

AND  
At the End of the Second Part, is a  
TABLE of all the Acts of Parliament  
mentioned in both these Parts.

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By **John Lilly**, of *Cliffords-Inn*, Gent.

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**PART I.**

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In the SAVOR:

Printed by **John Nutt**, Assignee of *Edw. Sayer Esq;*  
for **Charles Harper**, at the *Flower-de-Luce* over-  
against *St. Dunstan's-Church* in *Fleetstreet*. 1710.

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CONTINUATION  
OF THE  
Practical Register  
IN TWO PARTS.

Many RULES of COURT, and



At the End of the Second Part, is a  
TABLE of all the Acts of Parliament  
mentioned in both these Parts.

By James Wilson, of Clifford's Inn, Gent.

PART I.

In the 2ND VOLUME.  
Printed by J. B. Smith, at the Sign of the Crown, in St. Paul's Church-yard, at the Sign of the Crown, in St. Paul's Church-yard, at the Sign of the Crown, in St. Paul's Church-yard.

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# THE PREFACE.

**T**HERE having come to my Hands a little Book, entitled, *Styles's Practical Register*, wherein I thought were many Things well worth Observation, and some others which wanted some Correction and Amendment; and for that some Alteration had been made, as well in the Practice of the Law (that Book having been printed before the Restoration of King Charles II.) as also by several Acts of Parliament made since the publishing of it by

Mr. Styles. I did in the Year 1694,  
 make such Alterations, Corrections and  
 Additions thereunto, together also with  
 the Addition of some Acts of Parlia-  
 ment made after that Edition of it,  
 as I thought necessary and fit for my  
 own Private Use, without any Inten-  
 tion of making it Publick: But the  
 Bookseller, who had an Interest in the  
 Copy, did so much importune me, that  
 at length I was prevailed upon by him  
 to give him what I had done in the  
 Matter, with a Licence only to print  
 one Impression of it: And if the Book  
 proved worth the Reprinting, then I  
 designed to make some Additions to it,  
 by bringing it down to this Time;  
 and finding it to be of some Use, as it  
 then was, I made such other necessary  
 Observations as occur'd to me in my  
 Practice and Reading, with an Intent to  
 have



have them printed with the other Books, not designing any Profit or Benefit to my Self, but only for the Good of the Publick. So that the Bookseller dying before I had finish'd what I intended, and his Executors taking the Additions which I had made to belong to him (which they did not), sold the same to some Bookellers, who were in very great Haste to print it as it was, together with such Additions as they could get; and what they are, let the World judge. Therefore having made such a Progress in the Matter, I consented to let the same come Abroad, and have avoided the putting of any Thing therein which was in the former Impression, unless with some necessary Additions and Alterations which I would willingly have done to the other Impression, if the Bookseller had brought

brought it to me before he had sent it to the Press : And therefore I have, throughout these Two Parts, referred to the last Impression of the former Book, being the Fourth Edition, printed in the Year 1707, where there are any Heads which are in mine. And in this little Work of mine, you will find several Heads which are not in the former Impression ; together also with other new Matter, under the Heads which are in the former Impression. I have also made an Alphabetical Table of all the Heads, they not being printed in that Order in the other Book. And also another Table of all the Statutes Ancient and Modern, mentioned herein, which Table of Statutes will be printed at the End of the Second Part : And I do assure the Reader, that he will find the Years and Chapters

# PREFACE.

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ters of every one of them exactly and carefully set down. If the Reader can receive any Benefit by this little Work, it is all that is desired by him who is a true Lover of his Country and the Laws, and the Welfare of Mankind.

**Vale.**

**ADVER.**



ters of every one of them exactly and  
carefully set down. If the Reader  
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Work, it is all that is desired by him  
who is a true Lover of his Country  
and the Welfare of the People.

## ADVERTISEMENT.

**W**Hereas *Part 1.* and *Part 2.* are  
often referred to in the Table of  
the Statutes at the latter End of this  
Second Part, those References are only  
to this First and Second Part. But  
where you find *First Part* referr'd to at  
the General Heads in the Body of either  
of these Two Parts, there is meant  
the Fourth Edition of *Styles's Practical  
Register*, Printed in the Year 1707.

**S**tyles's *Practical Register*, in 8°. is likewise sold by  
Charles Harper, at the Flower-de-Luce over-  
against St. Dunstan's Church in Fleetstreet.

Abate

# Abatement.

Abatement, vid. { **Alien.** **Emparance.**  
**Baron & Feme.** **Judgment.**  
**Error.** **Privilege.**  
**Latin.** **Tender.**  
**Outlawry.**

**C** Rules of Abating of a Writ or Plaint, are Want of sufficient or good Partter; or where the Partter is not certainly alleged, also Writs of the Plaintiff, Defendant, or Place, Variance between Writ, Specialty or Record, Uncertainty of the Writ, Count or Declaration, or Death of the Plaintiff or Defendant; but this of Death is now remedied by a late Statute, made 3 & 9 W. cap. 10, Vide Postea.

By the Statute of 4 & 5 Anne, for the Amendment of the Law, it is Enacted, That no Dilatory Plea shall be received in any Court of Record, unless the Party offering the same doth by Affidavit prove the Truth thereof, or shew some probable Matter to the Court to induce them to believe that the Fact of such Dilatory Plea is true.

Another Dilatory Plea after a Respondens Ouster ought not to be received by the Court, for but one Dilatory Plea is allowable. 2 Sand. 47.

The Name of Earl, in our Law, is the most ancient Name of Dignity and Honour in England, and is Parcel of the Name, and is of the Substance of the Name, and if it be omitted in the Writ, it shall abate. *Dart's Rep. 60. 4.*

What the Defendant must do before his Dilatory Plea can be received; 4 & 5 Anne.

But one Dilatory Plea to be allowed.

The Name of Earl, if omitted, shall abate the Writ.

## Abatement.

Creations of Honours  
shall not abate Writts.  
1 E. 6. cap. 7. Sect. 3.

By the Statute of 1 E. 6. cap. 7. Sect. 3. it is Enacted, That if any Person shall be made or created Duke, Archbishop, Marquess, Earl, Viscount, Baron, Bishop, Knight, Justice of the one Bench or the other, or Serjeant at Law, depending any Action, Bill or Suit, yet no Writ, Action or Suit, shall be abatable or abated, but remain in force.

How the Entry is to be, where the Creation is made pending the Action.

Note, When any such Creation is made pending the Action, there must be an Entry upon the Roll, with a *post ultimam Continuationem*, scil. such a Day the King by his Letters Patents under the Great Seal of England, bearing Date the same Day, &c. and so set forth the Patent with a *Profert in Curia* of it, and a *quod predictus*, the Defendant *Hoc non dedit*.

The Plaintiff made a Knight pending the Writ, shall not abate the Action.  
1 E. 6. cap. 7. Sect. 3.

In an Affize, the Defendant pleads, That the Plaintiff was made a Knight of the Bath pending the Writ. The Plaintiff replied the Statute of 1 E. 6. cap. 7. Sect. 3. where it is provided, that the Writ shall not abate where the Plaintiff is made a Knight.

And the Question was, Whether a Knight of the Bath was within that Statute, and held that he was, and so are all other Knights; but a Baronet is not, unless he be a Knight also. *Siderfin* 40.

Deb't against the Def. as Knight and Baronet, he pleads that he was never Knighted.

Debt was brought against the Defendant by the Name of Knight and Baronet. He pleads in Abatement that he was never Knighted. The Plaintiff moved, that he might amend his Declaration, for that the Defendant had put in Bail by the Name of Knight and Baronet, which the Court agreed to if it were so. But upon Examination, it was found to be Baronet only:

And then they said, that they would not admit of any such Amendment; so

The Action abated: that the Plaintiff must arrest him again. 1 Vent. 154.

When to Plead in Abatement.

Upon a Declaration delivered before the Essoin-day, the Defendant hath the first four Days in the Term following to plead in Abatement, whether the Plaintiff gives Rules to plead or no. And although the Plaintiff doth not give Rules to plead the first Day of the Term, yet a Plea in Abatement cannot be accepted after the first four Days of the Term. Trin. 9. W. Reg. B. R.

Circum



Excommungement, or any other Plea in Disability of the Plaintiff, cannot be pleaded after a General Imparlance.

*Lutwich 19. Trin. 36 Car. 2. B. R. Latib. 179.*

How Excommungement is to be pleaded. *Vide Lutwich 19. 3 Lev. 208.*

None can certify an Excommunication to disable a Man, but he to whom the Court can write to absolve him, as the Bishop, or Guardian of the Spiritualties, 8 Rep. 68. a.

The Excommunication must be directed, *Universis sanctæ Matris Ecclesiæ Filiis*; and not *Universis & singulis Clericis & Literatis in & per totam Diocesin*, &c. 8 Rep. 38.

How to plead an Outlawry before, and an Outlawry after Judgment. *Vide Lutwich 110. 111. Vide postea, Tit. Outlawry.*

When an Outlawry must be pleaded in Abatement, and when in Bar. *Lutw. 1573, 1574. Co. Lit. Sect. 197. See Title Outlawry.*

This Disability of Outlawry doth not abate the Writ or Bill, but it is a Disability for the Plaintiff to proceed, until he hath gotten his Charter of Pardon, or revers'd the Outlawry. *Co. Lit. 128. b.*

When the Plea of Excommunication is allowed, the Writ doth not abate, but the Entry is *quod loquela remaneat quousque*, &c. 8 Rep. 69. a. See Title Tryal.

A Jew brought an Action, and the Defendant pleaded that the Plaintiff is a Jew, and that all Jews are perpetual Enemies *Regis & Religionis*. Judgment *si alio; Curia*. A Jew may recover as well as a Villein, and the Plea is but in Disability so long as the King shall prohibit them to trade; and Judgment was given for the Plaintiff. *Mich. 36 Car. 2. in B. Regis.*

How to plead that the Defendant is an Alien. *Co. Lit. 198. 4 Modern Rep. 285, 405.*

Privilege of the *Custos Breuium* of the King's Bench was pleaded in Com-

When to plead in Disability.

How Excommungement is to be pleaded.

Who can certify an Excommunication.

How the Excommunication must be directed.

&c. 8 Rep. 38.

How an Outlawry is to be pleaded.

How an Outlawry is to be pleaded in Abatement.

Outlawry doth not abate the Writ or Bill, but disables the Pl. to proceed, *quousque*, &c.

The Writ shall not abate for Excommunication, but *quod loquela remanet quousque*, &c.

That the Pl. is a Jew, is no Disability.

How to plead the Def. is an Alien.

How Privilege is to be pleaded.

*munis Banco* after Bail, and good, but not after a General Impar-  
lance. 3 Lev. 243.

How to conclude where the Defendant pleads his Privilege, or to the Person.

*beat*, &c. In other Cases he ought to conclude, *quod Billa predicta cassetur*, &c. M. 7 W.

When to plead in Bar, and when in Abatement.

And if pleaded in Abatement, it may after a *Respondes Ouster* be pleaded in Bar. Mich. 4 Anne Regina.

Two Matters in a Writ, where it shall stand good for Part, and where abate for Part.

Writ for one of them, there the Writ shall not abate for all, but shall stand for that which is good.

But when he brings an Action for two Things, and it appears that he cannot have this Writ for one of them, but may have another in another Form, there the Writ shall abate *in toto*, and not stand for that which is good. 11 Rep. 43. b. *Vide postea*.

If upon a Plea in Abatement Issue is found for the Pl. it is peremptory, but on a Demurrer it is a *Respondes Ouster*.

then it is a *Respondes Ouster* only. Lach. 178.

*Veni & defendit*, makes the Def. Party to the Action.

How to plead in Disability of the Pl.

Party by this Part of this Defence. Co. Lit. 127.

*Quando* gives the Court a Jurisdiction.

as *Quando Curia consideraverit*; *ibidem*. Lutwich 9. Shower Rep. 386, 387.

How to plead to the Jurisdiction of the Court,

and good, but not after a General Impar-

Where the Defendant pleads his Privilege, or to the Person, he ought to conclude his Plea, *petit Judicium si ad Billam predictam respondere compelli debeat*, &c.

A Plea that goes to the Action, and not to Person of the Plaintiff, ought to be pleaded in Bar, and not in Abatement.

And if pleaded in Abatement, it may after a *Respondes Ouster* be pleaded in Bar. Mich. 4 Anne Regina.

Where a Man brings an Action, be the Writ General, or Special and Particular: And he demands two Things; and it appears by his own shewing, that he cannot have an Action or better

Writ for one of them, there the Writ shall not abate for all, but shall stand for that which is good.

But when he brings an Action for two Things, and it appears that he cannot have this Writ for one of them, but may have another in another Form, there the Writ shall abate *in toto*, and not stand for that which is good. 11 Rep. 43. b. *Vide postea*.

If the Plea to the Writ be tryable *per Pan*, and Issue be taken thereupon, and found for the Plaintiff, the Judgment against the Defendant must be peremptory. But if there be a Demurrer to it,

then it is a *Respondes Ouster* only. Lach. 178.

That which makes the Defendant Party to the Action, are the Words, *Veni & defendit vim & injuriam quando*, &c.

And if the Defendant will plead in Disability to the Person of the Plaintiff, he must first make himself a

Party by this Part of this Defence. Co. Lit. 127.

But in Pleas to the Jurisdiction of the Court, *Quando* ought to be left out, because *Quando*, &c. gives the Court a Jurisdiction;

as *Quando Curia consideraverit*; *ibidem*. Lutwich 9. Shower Rep. 386, 387.

How to plead to the Jurisdiction of the Court, see Lach. 178. Note, it must be pleaded in Person.

## Abatement.

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The Defendant pleads in Abatement, that his Name is *Fermyn*, and not *Fermyn*, and pleads it thus; *Et predictus F. Fermyn venit*, &c. this is nought; for he owns the same Name as the Plaintiff hath counted: But it should have been, *Et super hoc venit F. Fermyn, & dicit quod ipse est eadem persona que arrestatus fuit per nomen F. Fermyn, & dicit*, &c. *Hill. 3 Wil. & Mar. Rot. 291. Showers Rep. 394.*

How to plead to a *Misnomer* of a Surname.

How to plead a *Misnomer* of a Surname.

The Defendant pleads, that he was baptized by the Name of *Micha*, and not *Michael*. The Plaintiff replies, that he is known as well by the Name of *Michael* as *Micha*. The Defendant demurs, because he ought to have traversed that he was *Baptized*, and not that he was known by one Name and the other, for a Man cannot have two Christian Names. And Judgment was given for the Defendant. *P. 7 W. Regis.*

How to plead a *Misnomer* of a Christian Name.

*Misnomer* of a Partner was pleaded in Abatement, and naught; because one shall not plead *Misnomer* of his Companion. *Lutwich 36.*

One Partner cannot plead *Misnomer* of his Companion.

Error depending in the *Exchequer Chamber*, was pleaded in Abatement to an Action of Debt upon a Judgment in the *King's Bench*, and concludes, *Unde petit judicium, & quod loquela remaneat sine die*; and doth not aver his Plea: Also it was pleaded after Imparlance, and the Plaintiff demurred for those Causes; and the Court said, That Error suspends the Execution of the Judgment. *7 W. B. R. Lutwich 602.* But the Court gave no Opinion, whether the Matter of the Plea was good or no; but *Showers, Rep. 146.* says, That it was held to be a good Plea, either in Bar or Abatement.

Error depending in the *Exchequer Chamber*, pleaded to an Action of Debt upon the Judgment in *B. R.*

Error suspends the Judgment.

The Nature of a Plea in Abatement, is to entitle the Plaintiff to a better Writ. *Yelv. 112.* But where the Defendant shews that the Plaintiff hath no Cause of Action, tho' he concludes his Plea in Abatement, yet it shall be good in Bar. *2 Mod. Rep. 64, 65.*

The Nature of this Plea shall be good in Bar, where a Plea concluded in Abatement.

Where the Defendant's Plea begins with *Petit judicium de Brevis*, and concludes in Bar, there a final Judgment

Where the Def. *Petit judicium de Brevis*, and concludes in Bar.



shall be given; but where it begins in Bar, and concludes in Abatement, there it shall be only a *Respondens Ouster*. *Carveth versus Prior, Pasch. 1 W. & M. Showers Rep. 4.*

Where the Matter in Abatement is pleaded in Bar, the Plea beginning and concluding in Bar, the Judgment shall be *quod recuperet dampna*, and not a *Respondens Ouster*. *Lutwich 42.*

The Death of a Plaintiff did in all Cases abate the Writ before Judgment, before the Statute of 8 & 9 W. 3. ca. 10.

But now see the said Statute, and the Remedy given thereby, in Title Judgment, where Death neither of Plaintiff or Defendant shall abate it.

Baron and Feme, the Feme is Administratrix, and an Action is brought against her Husband and her, she dies pending the Action.

her Death in Bar, *pus darein Continuance*. It seemed to the Court, that it ought to be pleaded in Abatement; and that also he ought to go further, and to say, that he hath no Assers. 10 W. B. R.

*Vide Title Pus darren Continuance.*

Upon a Writ of Error returnable in the Exchequer Chamber, before the Record was transcribed one of the Plaintiffs in the Writ of Error died, and

thereupon the Plaintiff in the Action taking the Writ of Error to be abated, sued out Execution on his Judgment, without any Rule of Court to warrant it, and took the surviving Defendant in the Action in Execution. The Court held this to be irregular, and

superseceded the Execution: Because the Plaintiff in the Action should have applied himself to the Court up-

on the Death of one of the Plaintiffs in the Writ of Error, and apprized the Court of this Death, that the Chief Justice might take notice of it, in order to make a due Return when called for. *Brace & al' & Pennoyer. Trin. 9 W. B. R.*

One who was sued as Executor, pleads in Abatement, that Administration was committed to him, and held good without a Traverse. *Pasch. 35 Car. 2. in B. R. 1 Brownl. 97. 2 Brownl. 184.*

Administration committed, is a good Plea for one sued as Executor.

How to be pleaded.

Error in the Exchequer Chamber.

One of the Pl'ts. died.

How Execution should be sued out.

Plaintiff in the Action should have applied himself to the Court up-

on the Death of one of the Plaintiffs in the Writ of Error, and apprized the Court of this Death, that the Chief Justice might take notice of it, in order to make a due Return when called for.

## Abatement.

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An Action, *Qui tam*, &c. was brought in this Court, the Defendant pleaded in Abatement, That he is an Attorney in the Court of Common-Pleas, and ought not to be sued out of that Court. Upon a Demurrer the Court inclined, that the Plea was a good Plea. For altho the King may bring his Action in what Court he pleaseth, yet the Action, *Qui tam*, is a popular Action, and brought by the Informer *qui tam*: And therefore they inclined to allow the Plea. *Hill. 6 W. B. Regis.*

Trespass for taking of Goods, was brought against Two Persons, One pleads, That he is an Attorney of the Court of Common Bench, and ought to be sued there only; and held to be no Plea: Because an Attorney shall not have his Privilege when another is joined with him. *Trin. 36 Car. 2. B. R.*

Upon an *Indebitatus*, the Defendant pleads in Abatement another Action depending for the same Matter in the Exchequer, and doth not say, That the Plaintiff hath declared thereupon; this is naught: Because it cannot be traversed, whether it be for the same Matter or no. *M. 7 W. in B. R. and Sparries Case, 5 Rep. 61.*

There need not to be a Venue in a Replication to a Plea in Abatement; Because all Pleas in Abatement (unless they are local) shall be tried by the Venue in the Declaration. *8 W. R.*

In a Replication to a Plea in Abatement, wherein Matter of Fact is pleaded, there the Plaintiff must pray his Damages. And if upon an Issue a Verdict be found for him, there shall be a final Judgment; but where special Matter is pleaded to the Writ, the Plaintiff in his Replication must only maintain his Writ. *3 Anne R. in B. R.*

No Advantage can be taken of a bad Declaration upon a Demurrer to a Dilatory Plea. *M. 7 W. in B. R.*

An Attorney of the Common Bench may plead, Abatement to an Action, *Qui tam*, in R. B. *well*

Trespass against Two; one pleads, That he is an Attorney of the Common Bench; no Plea.

Another Action depending, no Plea without saying, That the Pl. hath declared.

Need not to be a Venue in a Replication to a Plea in Abatement.

Where Damages must be prayed in a Replication to a Plea in Abatement.

The Judgment to be final.

Where no Advantage to be taken of an ill Declaration.

# Abatement

**Ancient Demesne pleaded in Specimen.**

**The Defendant cannot plead Ancient Demesne, without a Rule of the Court for that Purpose. See 5 Rep. 105. 4.**

**How to be try'd.**

**If Ancient Demesne be pleaded of a Manor, and denied, this shall be tried by the Record of *Doomsday Book*; but if Issue be taken, whether certain Acres of Land are Parcel of the Manor or not, this shall be tried by a Jury; for it cannot be tried by the said Book. 9 Rep. 31. 4.**

**The Reason of Abatement of Writs.**

**is not only because they shall not be twice charged, but also that they should not be twice vex'd for the same Debt. 3 Lev. 304.**

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## Attorney.

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# Attorney.

Attorney, 1<sup>st</sup> Part. 1.

Appearance.

Infant.

Attorney, See Guardian.

Wail.

Warrant of Attorney.

Rules.

**A**ttorneys are such Persons as take upon them the Charge of the Business of other Men, by whom they are retained.

It is very necessary for all Attorneys to read and consider well the Act of Parliament, made 1 Anne Regine, ca. 22. Entituled, *An Act for preventing Frauds in Her Majesty's Duties upon Stamp'd Vellum, Parchment and Paper*; and the other Acts made since, relating thereunto.

By a Rule of Court made by all the Judges of the Queen's-Bench and Common-Pleas, and also the Barons of the Exchequer, in Michaelmas-Term, Anno tertio Anne Regine, reciting, That divers Complaints had been made to them, That many Attorneys and Clerks, of the several Courts at Westminster, were not admitted of any of the Inns of Court or Chancery, according to ancient Course and Usage, by which they might be reformed, and Business of the Law better managed, to the greater Ease of the Queen's Subjects; the Neglect whereof is to the great Detriment and Decay of the Societies of the Law; and divers Inconveniencies do thereupon daily happen: For Prevention whereof, and to establish a Remedy for the future, It is ordered by the Judges of the several Courts of

What Attorneys are.

As to Acts of Parliament, 1 Anne, cap. 22.

A Rule for all Attorneys and Practisers to be admitted of some Inns of Court or Chancery.

Where to be admitted.

Queen's

*Queen's Bench* and *Common-Pleas*, and the Barons of the Court of *Exchequer* at *Westminster*, That all Attorneys and Clerks of the said Courts, not already admitted into one of the Inns of Court or *Chancery*, shall procure themselves to be admitted into one of the said Inns of Court (if those Honourable Societies shall please to admit them) or into one of the Inns of *Chancery*, before the End of *Trinity-Term* now next ensuing, and take Chambers there, (if conveniently they may be had) else that they take Lodgings in some convenient Place near the said Inns, and leave Notice in Writing with the Butler or Porter of such

What Attorneys are excepted out of this Rule.

Inn whereof they are admitted, where their Lodgings or Habitations are; except such Persons who are or shall be hereafter Inhabitants or House-keepers in *London*, *Westminster*, *Southwark*, or the Suburbs thereof, and Liberty of the Tower of *London*, and *St. Catherine's* there, and such who are sworn Attorneys of any Courts within the said Cities, Towns and Liberties.

And it is further hereby ordered, That for the future, no Person whatsoever shall be sworn an Attorney, or admitted, or enter'd a Clerk of any of the said Courts, or Offices there-

No Person to be sworn until admitted, and producing of a Certificate thereof.

unto belonging (except the Persons before excepted) unless first admitted of one of the Inns aforesaid, and bring and produce at the Time of his being sworn an Attorney, or admitted, or

enter'd a Clerk, as aforesaid, a Certificate under the Hand of the Treasurer, or Principal of the Inn whereof he is admitted, which they are respectively to give, without being paid any Thing for the same, testifying such his Admission; which Certificate, every Attorney or Clerk so sworn of the said Court of *Queen's Bench*, shall deliver to the Secondary of the said Court; and every Attorney so sworn of the said Court of *Common-Pleas*, shall deliver to the Clerk of the Warrants of the said Court; and every Clerk of the said Court so admitted or enter'd, shall deliver to the respective Prothonotaries of whose Office he shall be admitted. And every Attorney so

About Attorneys and Clerks in the *Exchequer*-Office.

sworn of the Court of *Exchequer*, or Clerk seated in any of the Offices belonging to the said Court, shall deliver to the *Queen's Remembrancer*, or his Deputy for the Time being, to be by the said respective Officers filed, before the Name of such Attorney shall be enter'd into the Roll of Attorneys; or such Clerk admitted, or enter'd, or seated, as aforesaid, unto which File of Certificate the respective Treasurers and Principals of the said Inns of Court

## Attorney.

II

and *Chancery*, shall or may from Time to Time resort, as they shall see Cause, without paying any thing for the same.

And it is further ordered, That no Attorney already sworn, or Clerk already admitted, enter'd or seated, or which hereafter shall be sworn, admitted, enter'd or seated, and which are or shall be admitted into any of the Societies aforesaid, shall put himself out of the Society whereof he is or shall be admitted, until he be admitted of some other of the said Societies, and deliver to the Treasurer or Principal of such Society whereof he was first a Member, a Certificate in Writing, signed by such Treasurer or Principal, testifying his being admitted of such other Society, (except such Person shall totally leave off the Practice of the Law as an Attorney, or Clerk in any of the said Courts.)

No Attorney shall put himself out of the Society he is of, until he is admitted of another.

Except he totally leaves the Practice of the Law.

And whereas by the Usage, Custom, or Orders of the Inns of *Chancery*, the Members thereof were obliged to, and did come into Commons, and continue therein, according to the Orders of such Society, to their great Ease in transacting their Causes one with another, and much Benefit to their Clients. But of late, most, or a great Number of the said Attorneys and Clerks, have neglected to come into Commons, or continue therein according to the respective Orders of the said Inns of *Chancery*, to the great Decay and Detriment of those Societies:

It is further ordered, That from the End of this present Term, the Attorneys and Clerks which now are, or

All Attorneys obliged to be in Commons.

shall be admitted into any of the Inns of *Chancery*, do, and shall come into, and continue in Commons for the Time or Times, as by the Orders of such Society whereof they are or shall be admitted, is, are, or shall be ordered, limited or appointed for them

to do; and in case any Attorney or Clerk aforesaid shall offend against this

The Penalty.

Rule, or any Part thereof, such Attorney shall be put out of the Roll of Attorneys; and such Clerk offending, shall be discharged and displaced from such Office to which he belongs, until he or they give Obedience to this Order; and the Secondary of the said Court of *Queen's-Bench*, and the respective Prothonotaries, and Clerks of the Warrants of the Court of *Common-Pleas*, and the *Queen's Remembrancer* of her Court of *Exchequer*, or his Deputy for the Time being, and all other Officers whom it may concern, are hereby required



red to give Obedience to this Order, and see that the same (as to themselves) be duly observed.

And for the more effectual and better putting in Execution of this Order, and that it may procure the Good hereby designed and intended,

In what Manner this Order is to be put in Execution.

It is hereby further ordered, That the respective Treasurers, and Principals of the Inns of Chancery, and the Ancients, Rules and Governours of the same, do, and shall from Time to Time, by such Ways and Means as they shall see fit and convenient, procure and get a List of the Names of such Attorneys and Clerks of the said respective Courts, who are not admitted of any of the said Inns of Court or Chancery; which List the said Treasurers and Principals, Ancients, Rules and Governours, shall yearly in Michaelmas-Term deliver unto the Right Honourable the Lord Chief Justices, and Lord Chief Baron of the said respective Courts, for the Time being, to the Intent that the Offenders against this Order may be compelled to give Obedience to the same.

To procure a List of the Practisers who are not sworn.

And it is also hereby further ordered, That the said Treasurers, Principals, Ancients, Rules and Governours, in like manner procure and get a List of the Names of such Persons as take up in them to practise as Attorneys or Clerks, in any of the said Courts, who are neither sworn Attorneys, or admitted, enter'd or seated Clerks, in any of the Offices of the said Courts; which List is to be delivered as above, to the Intent that such Offenders may be proceeded against in such Manner as shall be thought fit.

How this Rule hath been put into Practice.

Since the Making of this Rule, several Attorneys and Clerks of the Courts of Queen's Bench and Common Pleas have been served with it; and upon Affidavit of Service and upon a Motion for an Attachment upon their not obeying of it, the Courts have appointed, that such Person served with it should attend the Court, to shew Cause why they have not obeyed the Rule; and upon their being admitted into some of the Societies, as the said Rule requires, and paying of Six and twenty Shillings and Eight Pence for the Charges of the Rule and serving of it, then there is to be no farther Prosecution against them: But in case they do not appear in Court, and shew good Cause, or be admitted as the Rule requires, the Courts have frequently granted Attachments, and then they must pay before they can be discharged, Forty Shillings for the Charges of the Attachment and Prosecution thereupon.

An Attorney is joined Defendant with another, the Declaration must not be against one Defendant *in Custodia Marri*, and against the other *in propria Persona*, but against both, *in Custodia Marri*, because the Attorney hath in that Case lost his Privilege. 9. W. 3. Dyer 377. 2 Syd. 157. 1 Vent. 298, 299.

A Filazer of the Court of King's Bench was arrested, and he moved to be discharged upon Common Bail, because of his Privilege: But it appearing to the Court, that he was very much indebted, they did not think fit to grant him his Motion; but ordered him to put in Bail to the Sheriff, and plead his Privilege as he could. Hill, 9. Will.

Where a Warrant of Attorney is given to an Attorney to appear for a Defendant, the Attorney must appear for him according to the Rules of the Court; and he shall not repeat his Warrant: But the Defendant may, after such Appearance, (if he thinks fit) change his Attorney with Leave of the Court, but without Leave he cannot.

An Attorney ought not to suffer any Person to practise in his Name, by reason of the many Mischiefs and Inconveniencies which often happen to the Clients by this Means. And the Thing is very mischievous in it self, because he who suffers another to practise in his Name, is answerable for his ill Practice.

An Attorney, although he doth not practise, yet shall have his Privilege so long as he continues an Attorney upon Record. Lum. 1667.

It is against the Statute of 1 H. 5. ca. 4. for an Under-Sheriff to be an Attorney in any Cause in the County wherein he is Under-Sheriff; for if it should be suffered, it might be the Cause of favouring of his Clients, to the Prejudice of the Party concerned against his Client.

Every Clerk of this Court shall every Term, upon the Passing of his Account, pay to the Officer of this Court

An Attorney joined with another, loseth his Privilege.

because the Attorney hath in that Case lost his Privilege. 9. W. 3. Dyer 377.

A Filazer of the King's Bench, who was arrested, ordered to plead his Privilege.

Where a Warrant of Attorney for Appearance cannot be repealed.

One Attorney ought not to suffer another to practise in his Name.

He shall have his Privilege, tho' he doth not practise.

No Under-Sheriff to practise as an Attorney; 1 W. 5. ca. 4.

What to pay to Officers upon his Account.

who

who files the Bills, the ancient Fee of 2*s*. for every Attorney and Filazer for whom he enters. Mich. 15 Ca. 2. R.

Who may, and who may not, appear by Attorney.

An Idiot, a Nativitate, cannot appear by Attorney; but if the Idiot continued *de sana Memoria* for a long Time a Nativitate, and afterwards, *ex sola Visitatione Dei*, became *non compos Mentis*, it is not Error to appear by Attorney. See 2 Saund. 335, 336.

How an Idiot must sue or defend.

And how one Non Compos. When an Idiot sues or defends, it must not be by Guardian *pro bailiamie*, or Attorney, but ever in *propria Persona*. Co. Litt. 135. b. But one Non Compos must appear by Guardian, if within Age; or by Attorney, if of full Age. 4 Co. 124. b. Palm. 520.

Where common Bail is filed for a Defendant, he must answer all Bills filed against him of the same Term.

Where an Attorney is retained by a Defendant, and a Warrant is given him to be his Attorney in a Suit depending in this Court, and he files a Common Bail accordingly, he must appear for him by that Warrant in all Suits which are there depending against him in the same Term; unless he, for whom the Common Bail is filed, is a Defendant in Ejectment, who comes not into Court by the Process of the Court; so that Declarations be filed in the Office, and Copies delivered to the Defendant, or to the Attorney who filed the Bail before the End of the same Term his Bail is filed off. For the Defendant being after his Appearance and Bail put in, supposed to be in Custodia Mareschalli, the Attorney that appears for him is bound to receive any Declaration that is brought against him during that Term.

Not to receive or procure Blank Warrants.

No Attorney or Clerk of this Court shall receive, or procure, any Blank Warrant or Warrants, from any Sheriff or his Deputy, without Writ or Writs first delivered, upon Pain of severe Punishment, and Fine to be imposed upon such Sheriff and his Deputy, and utter Expulsion of such Clerks or Attorneys respectively offending in the Premises. Pasch. 15 Ca. 2.

Must not plead a false Plea.

for Delay. M. 2. W. tertii, B. R.

It is Criminal in an Attorney, and against his Oath, knowingly to plead a false Plea in Abatement, purposely



No Attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or enter'd, any Judgment, by Colour of any Warrant gotten from any Defendant being under Arrest, unless the same be enter'd into

in the Presence of the Attorney for the Defendant, or some Attorney who shall be then present, who shall subscribe his Name thereunto. *Plas. 15 Ca. 2. R. in B. R.* Because Attorneys are Officers of the Court, and are answerable to the Court for their Actions as Attorneys. And if no Attorney be present when such Warrant is obtained, the Court (if Judgment be enter'd thereupon) will set it aside.

In Michaelmas Term, 5 Anne Regime. It was ordered by the Court of Queen's Bench, That from and after

the First Day of the then next Hilary-Term, every Judgment in Debt, Case, Covenant, Trespass, Trover, or any other Action, shall be enter'd fairly on the Roll, or an *Incipitur* thereof, before such Judgment shall be signed by the Secondary, or any Judge of this Court, and the Names of the Plaintiff and Defendant, with the County where the Action is laid, and the Nature of the Action, with the Attorney's Name, shall be enter'd into a Book, to be kept by the Secondary of the Court for that Purpose; for which, nothing more shall be paid, than the ancient and accustomed Fee for entering of such Judgment.

And it is further ordered, That no Record of *Nisi Prius* shall be sealed or passed at the *Nisi Prius* Office, by the *Custos Brevium* of this Court, or any

Clerk of that Office, before the Issue in that Cause be fairly enter'd on Record, or an *Incipitur* thereof, and such Entry, with the Record of *Nisi Prius*, be first brought to and signed by the Secondary of this Court; for which, no Fee shall be demanded or paid, but the usual and accustomed Fee, due to the chief Clerk of this Court, for Entry of such Issue on Record.

And it is further ordered, That every Attorney shall bring in all his Rolls into the Office, fairly ingrossed

in a good full Court-Hand, by the Times limited by former Rules; (that is to say) The Rolls of Trinity, Michaelmas, and Hilary-Terms, before the Effoin-Day of every Subsequent Term; and the Rolls of Easter-Term, before the First Day of Trinity-Term.

Nor enter a Judgment upon a Warrant made by a Man under an Arrest, when an Attorney was not present.

Rule for the Entering of Judgments.

How to be enter'd into a Book.

No Record of *Nisi Prius* to be sealed, until the Issue is enter'd.

When to bring in their Rolls.

## Attorney.

Who to file Rolls. *Mich. 5 Anne B. R.*

Attorney ought to be paid his Fees, before and after he admitted to proceed in the Cause.

deliver up his Client's Writings and Papers to such new Attorney, or his Client.

Privilege not for an Executor.

No Privilege for Baron and Feme.

privilege is allowed him by the Court for the Recovery of his Fees. See *Powell's Case in Dyer. 377. 2 Sid. 157. 1 Vent. 299.*

A Wife cannot make an Attorney.

an Attorney for himself and her. *2 Sand. 213.*

Baron and Feme, the Feme within Age, how to appear.

made by the Court for his Wife. *1 Vent. 185.* But if they bring an Action, the Husband shall name an Attorney for both.

Attorneys to deliver Bills signed. *3 Jac. 1. ca. 7.*

upon non Assumpsit. *Showers, Rep. 338.*

When a Bill of Charges may be delivered by an Attorney.

May sue for Fees as a Solicitor.

bequer, or Chancery, and it will well lie.

Term. And that no Attorney at large, or any other Person, shall take any Numbers, or file any Rolls, but the Clerks of the chief Clerk of this Court only.

The Attorney ought to be satisfied his Fees, before any other Person shall be admitted to proceed in the Cause, in which he was formerly retained as Attorney, or be compelled to deliver up his Client's Writings and Papers to such new Attorney, or his Client.

An Attorney being Executor, shall not sue, nor be sued as a Privileged Person. *Hob. 177. 2 Just. 157.*

An Attorney shall not have his Privilege in an Action brought by himself and his Wife; because his Privilege is allowed him by the Court for the Recovery of his Fees.

Where Baron and Feme are sued, the Wife cannot make an Attorney, but the Husband must make one for himself and her. *2 Sand. 213.*

An Action against Baron and Feme, the Feme being within Age, she must appear by Guardian. *Danv. 602.* The Husband cannot disavow a Guardian made by the Court for his Wife. *1 Vent. 185.* But if they bring an Action, the Husband shall name an Attorney for both.

The Statute of 3 Jac. 1. ca. 7. For Attorneys to deliver Bills under their Hands, may be given in Evidence.

If an Attorney deliver his Bill of Charges to the Defendant after the Arrest, and before the Bill filed, it is well enough. *4 Jac. R. in B. R.*

An Attorney of this Court may bring an Action for his Fees for soliciting in the Common-Pleas, Court of

A Motion was made by the Plaintiff against her Attorney, to examine his Bill; and it appeared, upon the Report of the Master, That the Plaintiff had received of her Attorney a Sum of Money which he had recovered for her; and upon the Attorney's Payment of the Money to her, she gave him a Release: And it was pretended, That she knew not that it was a Release. The Court said, That if the Release had been obtained irregularly, they would lay their Hands upon it; but no Ill Practice appearing, they would do nothing in it. Pas. 9 W. R.

A Release obtained by an Attorney irregularly, must be set aside.

Where an Attorney pleads his Privilege, he must say, *Prout per processum sub Sigillo ejusdem Curie huic placito annexo apparet*, and the Writ under Seal must be annex'd to the Plea. Smith and Harris, Pas. 4 W. & M. Et Edwards & Copland, Mich. 6 W. & M. B. R.

How an Attorney must plead his Privilege.

An Attorney is not bound to discover and give in Evidence the Contents of a Deed shew'd to him by his Client, nor any Letters received from his Client, nor any Instructions given him by his Client, unless he will. Pas. 8 Will. B. R.

Not to discover any Deed shew'd to him, or Letters, or Instructions.

After a Verdict given in a Court of Record, Judgment shall not be stay'd nor revers'd, by Reason the Plaintiff in Ejectment or other Personal Action, being under Age, did appear by Attorney, and the Verdict pass for him. 21 Jac. cap. 13. of Feoffoiles.

No Error after a Verdict, that an Infant Plaintiff appeared by Attorney, 21 Jac. ca. 13.

In an Action Personal against an Infant, he must appear by Guardian, not by Attorney. Cro. Jac. 10. And if the Guardian for the Infant Defendant is admitted *ad prosequendam*, it is Error. 8 Co. 38. b.

An Infant Defendant must appear by Guardian.

If the Guardian is admitted *ad prosequendam*, it is Error.

The Infant Defendant cannot appear *per prochein aime*, for a Guardian and *prochein aime* are distinct, and the suit by *prochein aime* was not before, Westm. 1 Ca. 47. and Westm. 2 Ca. 15. and is given where an Infant is to sue his Guardian, or that the Guardian will not sue for him. Cro. Jac. 640. But in all Cases where an Infant is Plaintiff, unless in those special Cases he must sue by Guardian, and not *prochein aime*. Palm. 296.

Where the Infant must sue *per prochein aime*.

West. 1 Ca. 47.

West. 2 Ca. 15.

And where by Guardian.

An



**Attorney.**

Where one of Age and an Infant are Executors.

But *Twisden* said, That he of full Age may make an Attorney for him under Age. See 1 *Mod.* 47, 72, 296.

The Attorney must be named.

Where a Plaintiff or Defendant appears by --- B. *Attorn' sum* without a Christian Name, it is Error.

3 *Bulstr.* 202.

When the Warrant may be entered.

A Warrant of Attorney may be enter'd at any time after Judgment, and before a Writ of Error brought. *Dy.* 180, 48, 225, 34.

How an Infant must assign Errors.

Where an Infant brings a Writ of Error, he must assign Errors by Guardian, and not by Attorney. *Co. Entr.* 289.

**Acts of Parliament, See { Parliament.  
Statutes.**

**Admiralty, See { Courts.  
Terms of the Law, 14.4.**

**Actions**

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# ACTIONS.

**ACTIONS, 1st Part 25.**

**Tale.**

**Conspiracy.**

**Disceit.**

**Nuisance.**

**Slander.**

**ACTIONS, See**

**A**ctio nihil aliud est quam ius  
prosequendi in iudicium quod  
sibi debetur. Co. Litt. 255. a.

*Actio, Quid.*

**Right and Wrong**, are the Mother of all Actions; and there-  
fore no Action can be brought without  
the having of a Right, and the laying  
of a Wrong done before the Action.

Right and Wrong, the  
Mother of all Actions.

Hob. 198.

Where by Law a Man hath several Remedies, he may  
make use of which he will. Co. Litt. 145. a.

In Personal Actions, several Wrongs  
and Causes of Action of the same Na-  
ture may be comprehended in the same  
Writ, as one Action of Trespas will

Where several Causes  
may be comprehended in  
one Writ.

lie for several Trespases done at several Times. 8 R. 87. b.  
So also Debt for Rent, upon several Leases. 8 R. 88. a.

Actions founded both upon a Con-  
tract and Tort, cannot be joined in

Where not.

one, for they require not only several Pleas, but therein are  
different Proceſs; as in the one, Summons, Attachment, &c. and  
in the other, Attachment. 1 Vent. 166.

In Transitory Actions, the Tort may be alledged any where.

County; (except in the Case of Officers, by the Statute of

Where Traverse of the Place.

cal. *Lutm.* 1434, 1437, 1438, 1450, 1451.

Actions for Vexatious Arrests.

In Actions Transitory, as Battery, taking of Goods, &c. the Plaintiff may alledge the Tort, made not only in another *Ville*, but in another

21 *Jac. cap.* 12. of which, see *postea*; and the Place cannot be travers'd without special Cause of Justification Local.

Where Actions lie for Vexatious Arrests in Interior Courts. See *Lutm.* 1571, 1572.

If a Man delivers Goods to a common Carrier, to carry to a certain Place; if he loses them, Case lies against a common Carrier who loses Goods.

lie. *M.* 14. *Car.* 2. *B.*

So also against any other Person who takes Hire.

taken, a Promise is implied. *Vide* 1 *Syd.* 245. See *Hob.* 17, 18.

A common Carrier is robb'd, he must pay for the Goods.

and so implicitly took 4 *R.* 84. *a.* 2 *Sand.* 280.

So for Money lost, with other Goods, tho' he knew not of the Money.

rier be robb'd, he shall answer for the Money: For the Plaintiff was not bound to tell him all the Particulars in the Box, and it was on the Carriers Part to make a special Acceptance. See 1 *Ventr.* 238.

Case lies for Damage done by Fire.

A. leases to B. for Years by Indenture, B. lets this to C.

Where Case lies against Tenant at Will, for negligently keeping of his Fire.

R. And although no common Carrier, yet if he takes Hire, he may be charged upon a special Assumpsit. *Cr. Jac.* 263. Note, Where Hire is

A Man delivers Goods to a common Carrier to carry, who is robb'd of them; yet he shall be charged for them: Because he had Hire for them, upon him the safe Delivery of them.

A Man delivers a Box to a Carrier to carry; he asks what is in it? He tells him, A Book and Tobacco, whereas there was 100 *l.* besides; yet if the Car

If my Fire by Misfortune burns the Goods of another, he shall have an Action on the Case against me. 2 *H.4.* 1. Parol at Will, C. negligently suffers it to be burnt down; an Action of the Case lies for B. against him: Because B. cannot have Waste against C. and



shall be liable to pay treble Damages to A. for the Injury done by C. 4 Jac. 2. B. R. But it lies not for the Lessor against his Tenant at Will, or for Years by Parol, because it is the Lessor's Folly not to bind the Lessee by Covenant to repair and uphold, &c. 5 Rep. 13. b.

The Plaintiff says, That he was possess'd of an House for a Term yet in being, and lett it to the Defendant for a Year, and he suffer'd it to be burnt; and moved, that the Plaintiff hath not shewn that he hath any Reversion in him: But it appearing, upon the whole Matter, that the Action was brought after the Year expired, and the Term was then in Being, Judgment was given for the Plaintiff.

Case for negligently keeping of Fire.

A Man fires his Furzes in his own Close, and they fire the Plaintiff's Close adjoining thereto; and he brings his Action against the Defendant, upon the Custom of England, for not safely and securely keeping of his Fire: And after a Verdict, the Plaintiff (notwithstanding a Motion in Arrest of Judgment) had his Judgment that the Action well lay, for it was as much his Fire in the Field, as in his House, in the Eye of the Law. Mich. 9 Will. 3. B. R. *Turbervill & Stamp.*

A Man sets Fire to his own Furzes, which fire his Neighbours: Action on the Case lies against him.

Wide Title Conspiracy, where Actions will lie for maliciously indicting.

Malicious Indicting.

Where an Action is brought against a Constable, for a Thing done by him by Vertue of his Office; by the Statute of 21 Jac. 1. cap. 12. it must be brought against him in the County where he is Constable, and the Fact was done, and not elsewhere: And he may plead the general Issue, and give the special Matter in Evidence. And if the Plaintiff be Non-suited, or the Defendant be found Not Guilty, he shall have double Costs.

Where a Constable is to be sued.

21 Jac. 1. cap. 12.

In Actions of *indebitatus Assumpsit*, or *Trover*, if the Defendant comes before the Rules for Pleading are out, or Plea pleaded, and makes Oath, That if any such Promise was made, or Battery committed, or Conversion, &c. as in the Declaration is mentioned, that the same was made or committed in the County of S. (*viz.* another County than that where the

In Transitory Actions, upon an Affidavit of the Defendant and his Attorney, before Rules for Pleading are out, that such Action arose in another County, the Court will alter the *Venue* into that County where the Fact was committed.

Action is laid) and not elsewhere, out of the said County of S. And upon the Attorney's Oath, That he received the Declaration since the last Term, or but Six Days, or less, before the End of the last Term, the Court will (unless very good Cause be shewn to the contrary) alter the *Venue* into the County where the Defendant swears the Fact was committed: But if the Plaintiff will consent to give no Evidence but what arises in the County where his Action is laid; or if he will consent to be Nonsuited, if he doth not give some Evidence arising in that County: Then the Court will (if they think fit) discharge such Rule for changing the *Venue*.

Where Actions arising out of Corporations ought to be brought.

extend to the Tryal of such Actions which do arise within their own Jurisdictions, and not to any others. And they ought not, by Colour of their particular Jurisdictions, to entrench upon the Common-Law, but keep themselves within their own Bounds. *Lutw.* 1571, 1572.

Where an Action lies for arresting of a Man without a Cause.

not find Bail for so great a Sum, did maliciously cause him to be arrested. *Hill. 9 Will. 1 Saund. 228. Lutw. 1571, 1572.*

Cause lies for speaking of Words to the Damage of a Man's Trade, or Loss of Marriage.

of the Increase of his Estate, and Loss of his Marriage, had not the speaking of the Words prevented it. But where Special Damage is laid in the Declaration, as Loss of Trade, &c. if

Special Damages must be proved, if laid.

Words, he shall be Nonsuited; *per opinionem Capitis Justic. Mich. 34 Ca. 2. Et per alios*, if the Words in the Declaration

If the Words not actionable without it.

Plaintiff shall recover, otherwise not.

Actions arising out of the Jurisdiction of the Corporations, ought not to be brought in the Corporation-Courts, for their Privileges do only

An Action will not lie for arresting of a Man without a Cause, unless it be for an Exorbitant Sum. *Ita quod Defendens sciens*, that the Plaintiff could

An Action upon the Case doth lie for speaking of Words against a Man, by Reason of which he lost his Marriage, or his Trade, &c. For thereby he may receive Damage, in Respect

the Plaintiff doth not, at the Tryal of his Cause, prove his Special Damages laid in his Declaration, as well as his Words, he shall be Nonsuited; *per opinionem Capitis Justic. Mich. 34 Ca. 2. Et per alios*, if the Words in the Declaration are found to be spoken, but no Special Damage is found; then if the Words are actionable without such Special Damage, the Plaintiff shall recover, otherwise not. And this I have known since agreed by the Court.

Upon

**Upon a Special Promise, in Consideration that A. will permit B. to occupy and enjoy his Land for a Year, he will pay him 5 l. for it; an Action of the Case will lie here: But the Law will not raise any Promise upon an *Indebitatus Assumpsit*, or *Quantum Meruit pro occupatione terre, &c.* Nor can the Plaintiff recover upon an *Indebitatus*, or *Quantum Meruit*, for the Enjoyment of an House or Land, unless a particular Agreement to that Purpose be proved at the Tryal of the Cause. See also *Hard. R. 366.***

**Upon an *Infimus Computassent*, the Plaintiff must be sure to prove the Day of the Accompt, and Sum certain agreed upon, otherwise he will be Non-suited.**

**An Action upon the Case lies for calling one Whore in London: But this is by the general Custom of the City. The Court have since been divided in Opinion in this Case: But it is now settled, That the Action is maintainable in the Courts of London only. And if the Action be removed by *Habeas Corpus*, a *Procedendo* shall be granted. And it is made use of as the common Suggestion for a Prohibition on a Libel in the Ecclesiastical Court for calling one Whore in London.**

**An Action upon the Case lies for a Private, but not for a Publick Nuisance: But for a Publick Nuisance an Indictment only lies, because the Nation is concerned, in which all Private Interests are included. And besides, if an Action would lie, every Man may bring an Action, and by that Means ruin the Defendant. See *Co. Litt. 56. a. 4 R. 18. a. 104. a. 9 R. 113. a.* See *Cr. Bl. 664.***

**But if a Man digs a Ditch in the High-Way, into which my Servant falls and breaks his Leg, or my Horse falls into it; or if I have any other Particular or Special Damage, an Action lies. 2 *Bulstr.* 334. 1 *Roll. Rep.* 124. 4 *Co.* 18. a. *More* 180. Pl. 321. *Cr. Jac.* 491.**

Where Case will lie upon a Promise to occupy and enjoy an House, but general *Indebitatus* will not lie.

How a Declaration on an *Infimus Computassent* is to be proved.

Case lies for calling of a Woman Whore, by the Custom of London.

In the Courts of London only.

For which, a *Procedendo* lies.

Case lies for a Private, not for a Publick Nuisance, but an Indictment only.

Where a Man digs a Ditch in the High-Way, he who receives Damage may have his Action.



Where an Action must be brought with a *Simulcum*.

Where a Joint Action of Trespas doth lie against divers Persons, of whom some can be arrested, and others cannot, there the Action may be brought against them that are arrested, and do appear by their particular Names, and against them that are not arrested with a *Simulcum*, A, B, C, D, &c. *Viz.* To charge them that are arrested, but not the Parties in the *Simulcum*, any further, than only to take off their Evidence at the Tryal.

**Note.** The Parties in the *Simulcum* must be all of them named in the Writ, and proved to be Trespasgers, otherwise their Evidence will not be taken off, but they may be sworn to give Evidence for the Defendant.

Where Debt may be brought for Rent.

An Action of Debt for Rent upon an Indenture, may be brought by the Lessor against the Lessee, either in the County where the Lease was made, or in the County where the Lands lett do lie: Because there is Privy of Contract between the Lessor and Lessee. But where there is not any Privy of Contract, but only Privy of Estate, as in the Case of an Assignee, there the Action is Local, and must be brought only where the Lands lie.

A Horse is stolen at Grass, the Innkeeper shall not answer for him.

A Man comes to an Inn and delivers his Horse to the Ostler, and orders him to put him to Grass, and the Horse is stolen, there the Innkeeper shall not answer for the Horse. 8 Rep. 32. a.

In the Case of a Common Inn,

If a Man be robbed in the House of an Innkeeper who keeps a Common Inn, he shall answer for it. 8 Rep. 32. a.

For Travellers only, not Neighbours.

The Words in the Writ, *ad hospitandum homines*, are intended only Travellers, and not Neighbours or Friends, which are not travelling. 8 Rep. 32.

Answerable only for what is in his Inn.

The Innkeeper is answerable by Law for nothing which is out of his Inn. 8 Rep. 32. b.

Where the Servant or Companion of the Guest robs him,

If the Servant of the Guest, or his Companion, commits the Robbery, the Innkeeper shall not be answerable; but if he puts one to lie with him that robs him, then he shall. 8 Rep. 33. a. Directions how to declare

declare upon the Writ, and much good Matter throughout the whole Case, 8 Report 32, 33. See for these Matters, *Danvers Abr. from Fol. 14. to Fol. 18.*

The Husband may bring an Action alone for scandalous Words spoken against him and his Wife, and recover; and yet afterwards may bring another Action for to recover Damages done to his Wife by speaking of the same Words: For the Husband and Wife are both particularly damnified by speaking of the Words: And this shall not be said to be a double Vexation. *Quere* this, for the Law seems otherwise: Unless the Husband be an Innkeeper or Trader, and hath particular Special Damage by Words spoken of his Wife, and in this Case also it is doubtful, because, generally speaking, where the Right of Action survives to the Wife upon the Death of her Husband, there both must join. See Cro. Ca. 89. Cro. Jac. 301, 318. 3 Mod. 120. 1 Syd. 346. 2 Rol. Rep. 51.

One may have an Action upon the Statute of the 5 Eliz. cap. 9. sect. 12. against a Witness who doth not appear after he is served with a Process out of any Court of Record to appear at a Tryal, and hath had his Charges tender'd him according to his Calling, having Regard to the Distance of the Place necessary to be allowed, and he do not attend according to the Tenor of the Process, having no lawful or reasonable Impediment, shall forfeit to the Party injured thereby the Sum of 10 l. and such further Re-compence, as by the Judge of the Court out of which the said Process issued, shall be awarded, according to the Loss and Hindrance sustained by the Party who procured such Process. See Title *Costs and Charges*.

Note, You must be sure at the Tryal to make good Proof of serving the Subpœna, viz. by leaving of a true Copy of the Writ in Writing with the Party himself, and showing of the Subpœna, under the Seal of the Court, to him at the same Time; and also by leaving with him a Shilling or more, according to the Quality of the Person, and Distance of the Place where the Evidence is to be given.

Directions how to count upon the Writ.

Where Husband and Wife must join in an Action for Words.

And where the Husband may sue solely.

Action lies against a Witness for not appearing to give Evidence.

5 Eliz. ca. 9. sect. 12.

The Penalty is 10 l. and such further Damage as the Judge shall award.

What Evidence to be given at the Tryal.

Mistaking of an Action, is no Bar to a right one.

Case lies for selling of Goods not his Own.

Warranty, or alledging  
*Showers Rep. 66.*

Joint Interest with others, ought to be pleaded in Abatement.

Advantage thereof, they ought to have pleaded it in Abatement.  
*Sands vers' Child, 3 Lev. 351, 354.*

Where an Action lies against all the Proprietors, or the Master of the Vessel.

Case for keeping of a Dog, *ad mordendum oves Consuetum.*

verfable, but ought to be proved in Evidence. *Danvers. Abr. 19, Letter H.*

Case for Dilapidations. Realm for Dilapidations. *3 Lev. 268.*

The mistaking of an Action, is no Bar or Estoppel to the bringing of a new Action. *5 Rep. 33. a. See by Declaration.*

A Man possessed of Goods, sells them as his own, which are not so: An Action lies for the Disceit, without a that he knew them not to be his own.

If the Plaintiff hath a joint Interest with others, yet upon Not guilty pleaded, he shall recover for his Part; and if the Defendants would have taken

The Master of a Ship takes Goods a-board to carry for Hire, the Goods are spoiled, an Action lies against the Proprietors, or the Master, at the Plaintiff's Election. *3 Lev. 258, 259.*

To say, *Quendam Canem ad mordendum oves Consuet' Scienter Retinuit*, is good, for the Word *Scienter* goes to all the precedent Matter, and is not tra-

Case lies upon the Custom of the Realm for Dilapidations. *3 Lev. 268.*

Acquittance, See Acceptance.



# Accessory,

Accessory, See Principal.

**I**n the lowest and highest Offences Where there may be Accessories, and where not.  
 there are no Accessories, but all are Principals, as in Riots, Rout, forcible Entries, and other Trespasses, Vi & Armis, which are the lowest Offences. And so in the highest Offence, which is Crimen Laesae Majestatis, there be no Accessories; but in Felonies there are Accessories, both before and after the Fact. Co. Litt. 57: a, b.

## Ac etiam Bille.

Ac etiam Bille, See Latitat. Action.

**T**he Statute made 13 Car. 2. cap. 2. Sess. 2. was the Foundation of inserting the Ac etiam Bille in Writs.

The Foundation of Ac etiam Bille, 13 Car. 2. cap. 2. Sess. 2.

An Ac etiam Bille, ought not to be made out against any Peer or Peerefs, or an Executor or Administrator, or upon a Penal Statute, or for any Debt or Assumpsit under 10 l. nor in any Action of Account Render, nor in any Action of Covenant or Trover, unless the Damages are 10 l. or more: Nor in any Action of Trespass, or for Battery, Wounding or Imprisonment, unless there be an Order of Court for it, or a Warrant under the Hand of one of the Judges of the Court, out of which the Writ Issues for that purpose.

Where Ac etiam's to be, and where not.

Acceptance.

# Acceptance.

Acceptance, See { Acceptance, 1 Part 36.  
 Void, and  
 Voidable.  
 Rent.  
 Accord, and Satisfaction.

Acceptance, *Quid.* **A** Acceptance, is a taking in good part; and Quasi, an Agreement to some Act done before, which might have been done and avoided, if such Acceptance had not been by him that so accepted. Terms of the Law, 5. b.

Where Acceptance of Rent dispenses with a Condition, and where not.

If a Man makes a Lease for Years rendering Rent, upon Condition, That if the Rent be Arrear, he may enter: Here if the Lessor demands the Rent, and it is not paid; if he afterwards accepts the Rent, (before Re-entry made) he hath dispensed with the Condition: But altho' that after the Re-entry he accepts the Rent, (due at the Day for which the Demand was made) that shall not dispense with the

So in Case of a Distress for Rent.

Condition: *Because, as well before as after his Re-entry, he may bring Debt upon his Lease for Rent; and by his Re-entry the Lease is absolutely avoided.* 3 Rep. 64. The same Thing it is also when the Lessor Distresses for the Rent demanded. Ibid.

Acceptance shall not make a void Lease good.

Where the Conclusion of the Condition in a Lease for Years is, That then the Lease for Years shall be void; there no Acceptance of the Rent due at any Time after Breach of the Condition shall make the void Lease good. 3 Rep. 64. b. For the Lease, which is become void by the Breach of the Condition, cannot be made good by any Acceptance afterwards. Ibidem.

But where the Lease is voidable, it may.

But in the Case of a Lease for Life, if the Conclusion of the Condition be, That then the Lease shall be void. (Because it is an Estate of Freehold created by Livery, it cannot be

be determined without Entry :) In such Case, Acceptance of the Rent due at a Day afterwards shall bar the Lessor of his Entry, for this voidable Lease may be affirmed by Acceptance of the Rent: But it is otherwise in Case of a Lease for Years, for there the Lease is absolutely void. 3 Rep. 65. a.

If he that hath a Rent-Service or Rent-Charge accepts the Rent due at the last Day; and thereof makes an Acquittance; by this all the Arrears due before are discharged. 3 Rep. 65. b.

Where, by an Acquittance, all Arrears before are discharged.

The Acceptance of Rent by the Master of a Body Aggregate, shall not Devest any Right, Title, or Interest, which is in him and his Fellows.

Acceptance of Rent by the Master, shall not hurt the College where the Lease is void.

11 Rep. 79. a.

A Right or Title, which any one hath to any Lands or Tenements of any Estate of Inheritance or Freehold, cannot be barred by Acceptance of any manner of Collateral Satisfaction; but by Release or Confirmation, or some Act Tantamount, it may.

Acceptance of Collateral Satisfaction, no Bar to a Title to Lands.

3 Rep. 1. a, b.

**Admission, See Institution.**

**Admittance, See Copyhold.**

**Ad quod dampnum, See Ways.**

**Accord**



# Accord and Satisfaction.

Accord and Satisfaction, See

First Part 40!  
Acceptance.  
Breach.  
Pleading.

Accord with Satisfaction;  
*Quid.*

**A**CCORD, is an Agreement between Two at the least, to satisfy an Obligation that the One hath made to the Other, whether it be a Trespass, or such like Thing, for which he hath agreed to satisfy him; which if executed, it shall be a good Bar in Law to any Suit to be brought for the same Matter.

Where Acceptance of a Collateral Thing is a good Plea to a Bond, and where not.

Thing in Satisfaction, is no Plea: But if the Condition be for the Payment of Money, there Acceptance of a Collateral Thing (before the Money due) is a good Satisfaction. *Dyer* 1. a. 9. *79. a. 1 Roll.* 455, 456. *3 Lev.* 56.

How Acceptance in Satisfaction is to be pleaded.

Money mentioned in the Condition, and not in full Satisfaction of the Bond, for the Bond cannot be discharged but by Writing under Hand and Seal. *Cro. Jac.* 254, 650. *Yelv.* 192. *Vide Post.*

Acceptance of a lesser Sum is not good.

If a Man be bound in a Bond, with a Condition to make an Account, or to do other Matter Collateral to the Bond; here Acceptance of another

Condition, is no Plea: But if the Condition be for the Payment of Money, there Acceptance of a Collateral Thing (before the Money due) is a good Satisfaction. *Dyer* 1. a. 9. *79. a. 1 Roll.* 455, 456. *3 Lev.* 56.

**Note,** The Defendant must plead That the Plaintiff accepted the Thing agreed upon, in full Satisfaction of the

Condition, and not in full Satisfaction of the Bond, for the Bond cannot be discharged but by Writing under Hand and Seal. *Cro. Jac.* 254, 650. *Yelv.* 192. *Vide Post.*

Where a Penalty of a Bond is due Acceptance of a lesser Sum cannot be any Satisfaction of a greater. *Lutw.* 466. *5 Rep.* 117. a.

The Defendant pleads, That she Plaintiff had accepted another Bond in Satisfaction; but did not say, that the second Bond was given in Satisfaction, and therefore naught. *Lutw. 502.*

Accord with Satisfaction, is no Plea to a Covenant not broken: *Because the Covenants being created by the Deed, cannot be discharged but by Deed; but it is a good Plea in Satisfaction, and Discharge of the Damages upon a Covenant broken.* *Lutw. 359. See 6 R. 43. b.*

An Accord executed, is a good Plea where Damages only are to be recovered; although the Thing for which the Accord was made, was not worth 2 d. *Dyer 75. Pl. 25. 6 Rep. 44. 9 Rep. 80.*

When a Duty accrues by the Deed in Certainty, as by Covenant, Bill, or Bond, to pay a Sum of Money, there this Duty takes its Effect by Writing, and ought to be discharged by as high a Nature. But when no certain Duty accrues by a Deed, but the Action is for a Tort or Default, &c. for which only Damages are to be recovered, there an Accord with Satisfaction is a good Plea. *6 Rep. 43. b.*

The best way of Pleading of it is by way of Satisfaction, and not by way of Accord; for if it be pleaded by way of Accord, the Defendant ought to plead a precise Execution thereof in the Whole; and if he fail in any Part, his Plea is naught. *9 Rep. 80.*

But by way of Satisfaction, he may only say, That he paid the Plaintiff such a Sum in full Satisfaction of the Action, which the Plaintiff received, &c. Judgment *fi Actio.* *9 Rep. 80. b.*

One Promise may be pleaded in Discharge of another before Breach; but after Breach, it cannot be discharged without a Release in Writing. *Mod. 44.*

In ancient Time, the Pleading of an Accord without Execution was not good, according to the Resolution in *Keyroe's Case.* *9 Rep.* But now the Law is taken to be, that mutual

Plea, that another Bond was accepted in Satisfaction, naught; because he did not say, That it was given in Satisfaction.

Accord with Satisfaction, is no Plea to a Covenant not broken.

But it is good where broken.

Where Accord executed, is a good Plea.

Where it is a good Plea, and where not.

The best way of Pleading of it.

By way of Satisfaction.

Where one Promise may be pleaded in Discharge of another, and where not.

How the pleading of an Accord to be.

mutual

ACTIONS will lie upon mutual Agreement.

*Trin. 33. cap. 2. Jones 158. Raym. 450, 451.*

The Acceptance is the only Thing traversable.

Traverses that he did not accept the Money or Horse in Satisfaction; this is a good Traverse: *Because the Acceptance is the only material Thing.* Hob. 178. Styles 239, 263.

Accord with Satisfaction, where a good Plea, and where not.

But good in an Appeal of *Mabeim*. 9 Rep. 78. b.

How to be pleaded in an Assumpsit.

Assumpsit to pay Money at several Days. Defendant pleads, that he paid Part before the Day, and that the Plaintiff had accepted Goods for the Residue before it was due: Upon which the Plaintiff Demurs; because the Defendant ought to have pleaded, that he had given the Goods in Satisfaction, &c. according to *Pinnell's Case*, 5 Rep. 117. and the Plaintiff had Judgment.

It's a good Plea in all Actions which suppose a Tort.

mutual ACTIONS will lie upon such Agreements, and therefore such Plea shall be allowed. *Case against Barber,*

Where the Defendant pleads Payment of Money, or Delivery of an Horse in Satisfaction, and the Plaintiff

Accord with Satisfaction, is a good Plea in Personal ACTIONS where Damages are only to be recovered, but not in Real ACTIONS. 4 Rep. i. b. 9 Rep. 70. b.

Assumpsit to pay Money at several Days. Defendant pleads, that he paid Part before the Day, and that the

In all ACTIONS which suppose a Wrong, *Vi & armis*, where a Capital and Exigent lay at the Common Law, there an Accord is a good Plea. 9 Rep. 77. b. *Peytoe's Case*.

Amendment



# Amendment.

Amendment, See { 1st Part 41.  
Costs.  
Jeofailles.  
Writs.

**A** Amendment is, where Error is in the Process, there the Judges may amend it after Judgment. But if there be Error in giving of the Judgment (viz. a wrong Judgment is given) there they cannot amend it, but the Party must bring his Writ of Error; but where the Fault appears to be in the Clerk who writ the Record, it may be amended.

It is a Rule at the Common Law, that you shall never Amend a Record after a Verdict, whereby to make the Jury attainted, or to take away the Authority of a Judge in the Trying of the Cause. *Mich. 8. W. R.*

A Record cannot be amended after a Verdict.

A Special Verdict was amended after Entry upon the Roll, by an Entry of a Lease by Indenture, found by the Jury in the Notes, but not put into the Verdict. *4 Rep. 52. b.*

Where a Special Verdict may be amended after Entry upon the Roll.

**Note,** In all Rules where there is Mention made of Amendment upon Payment of Costs; the Intent of the Rule is, to pay such Costs as the Secondary shall tax.

Upon Amendment on Payment of Costs, the Secondary must tax them.

**Where** the Curfitor mistook in an Original varying from his Instructions, as appeared by the Oaths of the Plaintiff's Attorney, and of the Curfitor; this Original is amendable at the Common Law, and so ordered. *8 Rep. from 150, to 155.* But if he had not varied from his Instructions, it could not have been amended.

An Original varying from the Instructions, amendable.

Judges may amend their Judgments, or any Part of the Record, the same Term.

not in the Roll; but of another Term they could not, until the

14 E. 3. cap. 6.

common Practice in C. B. is to amend a Judgment, tho' of another Term, which the Court says is their own Judgment, and therefore if it be not well entred, they will order it to be so, upon Payment of Costs, if a Writ of Error be brought thereupon.

What Matters are amendable at the Common Law, and what not.

Judicial Writs have been often amended.

A Precipe in a Recovery amended.

What Misprisions are not remedied.

The Court will not order the Amendment of a Writ of Error, for the Reversing of a Judgment.

will do, in Case of an Original. *Pas. 12. W. B. R.*

Entry of the King's Silver Roll amended after Error.

Mistakes in Returns of Writs, Fines, and Recoveries, are amendable.

A Recovery amended.

amended after a *Formedon* brought. *5 Rep. 46. a.*

At the Common Law, the Judges may amend as well their Judgments, as any Part of the Record, in the same Term; for in the same Term the Record is in the Breasts of the Judges, and Statute of the 14 E. 3. cap. 6. *Vide 8 Rep. 156. b. 157. a.* Now the com-

What Things are now amendable at the Common Law, and what not; see the whole Case, *8 Rep. 156.* See also in this Title of *Amendments*, and Title *Jeofailes.*

Judicial Writs have been often amended according to the Roll, but the Roll was never amended. *8 Rep. 157. a.*

A Precipe in a Recovery obliterated, was ordered to be amended by the other Parts of the Record. *8 Rep. 160. d.*

What Misprisions are not remedied, and what Acts do not extend to them. *8 Rep. 162. a. 8 H. 6. cap. 12, 15.*

The Court will not order a Curfitor to amend a Writ of Error, which is for the Reversing of a Judgment. But where it is to make good a Judgment, they will do it; so also they

The Entry of the King's Silver was amended upon the Roll after a Writ of Error brought, and several Precedents of Amendments were produced. *5 Rep. 43. b.*

Mistakes in the Returns of Writs, Fines, and Recoveries, which are Common Assurances had by mutual Consent of Parties, are amendable. *5 Rep. 45. b.*

In a Common Recovery by the Mistake of a Clerk, *Isfeild* for *Ifeild*, was

**Note,** After Tryal, and before Judgment entred, the Plaintiffs Attorney filled up the Blanks for the Day and Year in the Imparllance Roll without Leave of the Court, and held good: But if a Judgment had been entred on the Roll, then it could not have been done without Leave of the Court; but the Court may, if they think fit, amend. *Worsley's Case, Latch, 154. to 155.*

Where amendable after Verdict, and before Judgment.

It was moved after Verdict for a new Tryal, because after a Plea pleaded, the Plaintiff had amended his Declaration in a material Point, and therefore the Defendant made little Defence. *Curia, If the Defendant had made a full Defence, he had lost the Benefit of taking Advantage of the Alteration. 6 W. & M. B. R.*

Where a Declaration is amended, after Plea pleaded.

The Plea-Roll and *Nisi Prius* were, *Et predictus Defendens similiter, &c.* whereas it should have been, *Et predictus Querens similiter, &c.* And after a Verdict, it was ordered to be amended. Because it appeared plainly to the Court to be the Fault of the Clerk, and so within the Statute of 8 H. 6. cap. 15. of Amendments. 7 W. & M.

The Plea-Roll, and *Nisi Prius*, amended after Verdict for a Default of the Clerk.

3 H. 6. cap. 15.

Where the Exception is to the Form of the Entry of the Judgment, the Court may order it to be made right: Because it is their own Judgment. 3 Annæ B. R.

The Court may amend their own Judgments.

Where two several Persons join in one Declaration, and one of them dies pending the Suit before Judgment, the Declaration could not be amended by striking out of the dead Party; but the other Party that survived must have a new Writ, the Action being abated. For the Death of one of the Plaintiffs did at the Common Law abate the Writ, and where the Writ is abated, the Declaration was there gone also. But now by the Statute of the 18 Car. 2. cap. 8. It is Enacted, That the Death of neither Party, between the Verdict and the Judgment, shall not hereafter be assigned for Error, so as such Judgment be entred within two Terms after such Verdict. And by another Statute made 8 & 9 W. Tertii;

Formerly where one Plaintiff died, the Action abated.

But this is remedied by 18 Car. 2. cap. 8. where either Plaintiff or Defendant died after Verdict.



And by another Statute, 8 & 9 *Ed.* cap. 10. that the Action shall not Abate by Death, but shall Survive.

the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated. But such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

The Court will grant a *Certiorari* to certify Diminution.

Court, to certify the Truth of the Matter.

Mistakes in Awarding Process on the Roll, amendable.

Stat. 8 *H.* 6. cap. 15. cannot be extended to Criminal Causes.

A Caption of an Indictment is amendable the same Term it comes in.

Nor to Actions, *Qui tam*.

The King may amend at the Common Law, where the Subject cannot.

The several Statutes of Amendment:

14 *E.* 3. cap. 6.

11 *H.* 4. cap. 3.

36 *E.* 3. cap. 15.

8 *H.* 6. cap. 15.

Discontinuance in a Criminal Cause is fatal, but not in a Civil Cause.

8 *H.* 6. cap. 15.

cap. 10. It is Enacted, That if there be two or more Plaintiffs or Defendants, and one or more of them die; If the Cause of Action shall survive to the surviving Plaintiff or Plaintiffs, or against

the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated. But such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

In case of a Diminution, or a false Transcript, made and returned from an Inferior Court, this Court will grant a *Certiorari* to the Inferior

Mistakes in Awarding of Process on the Roll, being the Act of the Court, are amendable. See *Blackmore's Case*, in the 8 *Rep.* 3 *Anne* in *B. R.*

The Statute of 8 *H.* 6. cap. 15. cannot be extended to Amendments in Criminal Causes. 3 *Anne* *B. R.* 1 *Sid.* 243.

A Mistake in the Certificate of the Caption of an Indictment certified into *B. R.* may be amended the same Term it comes in, but not afterwards. 1 *Sand.* 249.

Declarations upon Penal Statutes, *Qui tam*, &c. not amendable after Issue joined. 2 *Mod.* 144.

The King may amend at the Common Law, where the Subject cannot, as in a *Quare Impedit*, and an Original. 3 *Anne* *B. R.*

The first Statute of Amendments 14 *Ed.* 3. cap. 6. 11 *H.* 4. cap. 3. *Vide* 36 *Ed.* 3. cap. 15. Another is 8 *H.* 6. cap. 15. And other Statutes since which see in *Tit. Feofails*.

If in a Criminal Cause a Man hath a Day given him by the Court, and doth not appear that Day, but the next, it is a Discontinuance; but in a Civil Cause, it is helped by the Statute of 8 *H.* 6. cap. 15. 3 *Anne* *B. R.*

A Declaration upon the Statute of Winton for a Robbery, was ordered to be amended after Issue joined, and the Jury brought to the Bar to try the Cause. 3 Lev. 347.

The Teste of the Original Writ is of the very Substance of the Writ; for if it hath no Teste, it is not pleadable; and be it false *Latin*, or no *Latin*, it is not amendable. 1 Lev. 2.

The Mistake of a Clerk in the Crown-Office in the Return of a *Mandamus*, ordered to be amended. *Show. Rep.* 273.

The Plaintiff may amend his Declaration, though it be Seven Years past since he declared, if it be but in Paper. *Hill. 23 Car. B. R.* He paying Costs, or suffer the Defendant to Imparle till the next Term after: *For the Defendant is no more prejudiced thereby, notwithstanding the Antiquity of the Declaration, than if the Declaration were but of the Term next preceding.*

A Declaration, grounded upon an Original Writ, cannot be amended if the Writ be Erroneous; but if it be upon a *Latitat*, or Bill of *Middlesex*, it may be amended. *Pas. 24 Car. B. R.* Because the Original Writ upon which it is grounded, if it be Erroneous, is not amendable. But a Declaration in the *King's Bench* is not grounded on the *Latitat*, or Bill of *Middlesex*, these Writs being only to bring the Defendant into Court, and the Plaintiff is at large to declare as he pleaseth.

The Court will not suffer the Plaintiff, in an Action upon a Prohibition, to amend and vary his Declaration from his Suggestion delivered into the Clerk of the Papers. *Mich. 1 Anne B. R. Sparrow and Allen.*

When a Transcript of a Record is removed out of the *Common Pleas* Court, and is to be amended; here the Clerk in the *Common Pleas* is, by Rule of Court, to bring in the Original Record out of the *Common Pleas* into this Court, that the

Amendment of a Declaration upon the Statute of Winton, upon the Day of Tryal.

The Teste of an Original is not amendable.

Return of a *Mandamus* amended.

The Plaintiff may amend his Declaration, if in Paper only, upon payment of Costs.

A Declaration upon an Original cannot be amended, but upon a *Latitat* it may.

The Court will not suffer the Plaintiff, in an Action on a Prohibition, to vary from his Suggestion.

How a Transcript out of a Record in the *Common Pleas*, is to be amended in this Court.

Transcript may be here amended in open Court by the Record it self. For every Court will only trust their own Officers with the Records of their Court, who are accountable to them for their Actions, and are punishable by them for their Misdemeanors; and with such Persons, Records are only to be trusted.

How a Transcript out of an Inferior Court may be amended.

be a Record to warrant it. *Mich. 1 Anna B. R.*

The Clerk of the Assizes may amend a *Postea* by his Notes.

*Faults shall be said to be but Vitium Scriptoris, and not the Errors of the Parties. See Cro. Ca. 358.*

A Demurrer in Paper may be amended.

the Leave of the Court, or the Consent of the Parties concerned.

Where a *Postea* may be amended.

within the compass of an Attaint.

The Statute of *Jeofailes* extend to Inferior Courts; and the Statute for the Amendment of the Law.

4 & 5 Anna, cap.

A Writ of Error returned, cannot be amended.

which the Law will not admit.

A Writ of Error was to return a Record in Trespas upon the Case; and the Action was Trespas only; nor good.

So also they will, upon the Return of a *Certiorari*, amend a Transcript out of an Inferior Court, by a Record remaining in that Court, if there

The Clerk of the Assizes may amend the *Postea* by his Notes, if it be mistaken, after that he hath returned it into this Court. For such

After the Parties have joined in Demurrer, the Demurrer may be amended, if it be but in Paper, by the Consent of the Parties concerned.

A *Postea* may be amended by the Record, in such Things, whereby the Amendment may not bring the Jury

The Statutes of *Jeofailes* are now adjudged to extend to Inferior Courts, as hath been lately adjudged between *Walwyn and Smith*, and *Phyler and Boson*. And also now by the Statute for the Amendment of the Law. 4 & 5 Anna, cap.

A Writ of Error returned and filed, cannot be amended: Because that would be an Alteration of a Record,

A Writ of Error was to return the Record and Proceedings: *De quadam Transgressionem super Casum*: And the Action was in Trespas only. This Writ, being an Original Writ, cannot be amended. 3 Anna B. R.



The Record and Proceſs of Real and Perſonal Actions, &c. whereof Judgment is given and inrolled, or Things touching ſuch Plea, ſhall not be amended or impaired by the new Entering of Clerks, or by the Record or Thing certified in any Term after ſuch Judgment given and enrolled. 11 H. 4.<sup>d</sup> cap. 3.

Where there ſhall not be any Amendment of another Term.

11 H. 4. cap. 3.

# Amends.

Amends, See { Tender.  
Bailiff.  
Damage Feazant.

**A** Mends, is a Satisfaction given for an Injury done.

Amends, Quid.

# Attachment.

Attachment, See { 1st Part 50.  
Award.  
Contempt.

## Attachment.

**T**here is a Writ of Attachment, which is granted by the Court for any Offence or Contempt done to the Court, or against any Rule of Court; and when the Party appears upon the Attachment (which must be on the Crown Office side) he must upon his Oath answer Interrogatories to be there exhibited against him; and if he be reported by the Master to be in Contempt, he is finable by the Court.

There is also a Writ of Attachment at the Suit of an Attorney of the Court, which is in the Nature of a Capias, to bring a Defendant into Court.

The Court will not grant an Attachment upon an Award, without Service of a Copy of it, and Demand of the Money.

9 & 10 *W. 3. cap. 15.*

Money awarded, by the Person who is to have the Money, or some other Person who hath a good Authority from him to receive it, and he then neglects or refuses Payment of it.

Where it lies for the Non-performance of an Award by some of the Jury.

Where a Juror is withdrawn, and the Matter referred to the Arbitration of some of the Jurors; and they make an Award; the Court will not grant an Attachment for the Non-performance of this Award, until the Party, who is awarded to pay the Money, is served with the Award, and the Money demanded of him by the other Party, or some Person having Authority from him; and he then Refuses or Neglects paying of it: Of all which an Affidavit must be made, and produced in Court. But an

The Court will not grant an Attachment for the Non-performance of an Award, made by Rule of Court pursuant to the new Statute of the 9 and 10 of *Will. tertii cap. 15.* without Personal Service, with a Copy of the Award, and a Demand of the

Action

## Attachment.

41

Action will lie upon the Award, upon the Delivery of it, without demanding of the Money. *Hill. 8 W. Regis B. R.*

*Note*, Before an Attachment, for Non-payment of Costs upon a Rule of Court; will be granted, an Affidavit in Writing must be made of serving the Party personally, and demanding of the Money taxed upon the Rule, by the Person to whom payable, or some Person who had Authority from him to receive the same for him.

How to proceed to procure an Attachment.

Regularly, upon a *Mandamus* there must be an *Alias* and a *Pluries* before you can have an Attachment for the not making of a Return. *Pas. 12 W. B. R.* But the Court may, if they think fit, order the Return to be made sooner.

No Attachment until a *Pluries Mandamus*.

An Attachment was granted against Two Bailiffs, for Arresting the Tenants of one *Glover* upon a *Latitat* of this Court upon the *Lord's Day*, when they might as easily have done it upon any other Day of the Week, 23 *Car. B. R.* The Common Law is tender of keeping the *Lord's Day*. But now there is an Act made, 29 *Car. 2.*

It was granted against Two Bailiffs, for Arresting upon the *Lord's day*.

*cap. 7.* Intituled, *An Act for the better Observation of the Lord's Day, commonly call'd Sunday, which makes all Arrests upon the Lord's Day void.* See *Title Sunday*.

But since, the Act, 29 *Car. 2. cap. 7.* makes all those Arrests void.

**Amerce=**



# Amercement.

Amercement, See { 1st Part 57.  
Fine

An Amercement, *Quid.*

**A**mercement is called in Latin *Misericordia*, for that it ought to be assessed mercifully; and this ought to be moderated by Asserment of his Equals.

The Cause of an Amercement in a Plea, Real, Personal or Mixt, (where the King is to have the Fine) is, for that the Tenant or Defendant ought to render the Thing demanded by the King's Writ the first Day, which if he doth, he shall not be amerced; so that the Tenant or Defendant shall be amerced for Delay. *Co. Litt.* 116. b.

Amercements, in what other Cases.

want of Suit of Court, or for not amending of something which was appointed to be done by a certain Time before, or in such like Cases. And in these Cases, the Offendor puts himself in the Mercy of the King, or of his Lord. See *Terms of the Law*, 41.

By whom Fines are set.

And by whom Amercements.

What Courts can Fine.

And what Amerce only.

What is a good Amercement in a Leet, and how to be assented.

ought to be by Asserrors elected by the Steward, 8 R. 40. b. and by the Jury, and they to have an Oath administer'd to them for that Purpose.

An Amercement, is a Penalty assessed by the Equals of the Party amerced for an Offence done; as for Fines and Amercements; for Fines are always imposed and assessed by the Court; but an Amercement by the Country. 8 Co. 39.

No Court can impose a Fine, but a Court of Record. 8 Rep. 41. a. A County or Hundred Court can only Amerce, but not Fine. *Ibid.*

Amercement in a Court Leet, without saying to what Sum, is naught. Also that, it was assented by all the Jury to 40 s. is naught: Because

*Purpose.* Levins 206, 207. Hob. 129. and it ought to be *afferr'd* mercifully. 8 R. 39. a. 59. b. Co. Litt. 126. b. A Man shall not be amerc'd in a Leet for a Trespass to the Lord, for he shall not be his own Judge; but he may be amerc'd for Non-Payment of *Certum Letum* to the Lord, he being a Deciner. Raym. 260. 2 Heb. 139. 1 Leon. 242.

For an Amercement in a Court Baron, the Lord cannot distrain without a Prescription: But for a Fine, and all Amercements in a Leet, a Distress is incident of Common Right. 11 R. 45. a, b.

No Distress for an Amercement in a Court Baron; But in a Court Leet it is of common Right.

Fines imposed by any Court of Record, are not to be *afferr'd*. 8 R. 39. a, b. 2 Inst. 27.

What Fines are not to be *afferr'd*.

If a Jury in a Leet tax an Amercement, this is sufficient without any other *Afferrment*; for the *Afferrment* is the Act of the Jury, and the Amercement is the Act of the Court. 8 Rep. 40. b. 2 Rol. Abr. 542. Pl. 5. Cr. Car. 275.

Where an Amercement need not to be *afferr'd*.

It was said to be the constant Course throughout the Realm, for Stewards (even in Court Barons, where the Suitors are Judges) to assess the Amercements. Cro. El. 748. But they ought to be *afferr'd* by the Homagers or *Afferrers*. 2 Rol. Rep. 3, 4. But no Amercement can be assessed at a Leet for not appearing, without a Presentment that the Offendor owes Suit and Service to the Leet. Cro. El. 241.

How Amercements ought to be assessed and *afferr'd*.

In Court Barons.  
In Court Leets.

An Infant, being Plaintiff or Defendant, shall not be amerc'd, because he shall not find Pledges. Co. Litt. 127. a. 8 R. 61. And therefore the Entry is, *Ideo in Misericordia sed condonatur quia Infans*. 8 R. 61. b. 9.

An Infant shall not be amerc'd, and why.

How the Entry of the Pardon to be.

In Case for Words against Baron and Feme, for Words spoken by the Feme, and Judgment is given against both, as well the Baron as the Feme, shall be amerc'd. Hob. 79.

Where both Baron and Feme shall be amerc'd.

Where a Township shall be amerc'd.

ship shall be amerc'd. 3 *Instr.* 53. But if it be walled, whether it be in the Night or Day, the Town shall be amerc'd. *Ibid.*

The Jury, who must be here themselves, must be fined severally, and why.

**Let:** The Steward must fine them severally, not jointly, for the Refusal of one, is not the Refusal of another. Co. 11, R. 42,

If in the Day-time a Murder be committed in a Town not walled, and the Murderers escape, the Town-

If at a Court Leet 12 chief Pledges are sworn to enquire of the Articles of the Leet, and refuse to present, that they ought to pay 10 s. per Certu

Assign

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# Assignment.

Assignee, and Assignment, See { 1st Part 60.  
Covenant.  
Disseisor.  
Privities.

**A**ssignee, is he to whom a Thing is appointed or assigned to be occupied, paid or done, and is always such a Person which hath the Thing so assigned in his own Right, and for himself. Terms of the Law, 31. a.

What, and who, is an Assignee.

Where a Man sues an Assignee for Rent, he needs not to set forth a Deed of Assignment: But when he makes a Title under a Deed of Assignment, or justifies under it, there he must shew it. 4 *Fa. R. B.*

Where an Assignee is sued for Rent, the Plaintiff need not set forth the Deed of Assignment.

But where Title is made under it, he must.

Tenant by *Elegit*, cannot assign before actual Possession: Because it is Chose in Action. But a Sale of the Land after the Delivery by the Sheriff, and sealing of the Deed upon the Land, shall be good:

What Assignments by Tenant, by *Elegit* shall be good, and what not.

Because the sealing of the Deed upon the Land, puts the Grantee in actual Possession. 4 *Fa. 2. B. R.* Showers Rep. 290, 291.

Tenant, by *Elegit* or Statute, or Lessee of a Term taken in Execution, shall have Covenant. 5 Rep. 7. a.

Tenant by *Elegit* Stat. or upon a *Fi. fa.* shall have Covenant.

If Lessee for Years covenants to repair during the Term, it binds all Assignees and others, into whose Hands the Estate comes. 5 Rep. 17. b.

Where the Lessee's Covenant binds the Assignees.

Assignee of an Assignee shall have Covenant, so shall the Executors of the Assignee of the Assignee. *Ibid.*

Assignee of Assignee, and his Executors, may have Covenant.

Covenant lies against the Assignee, though not named.

Assignee, though not named, it being for the Support of the Premises demised. *3 Rep. 24. b.*

What Covenants Assignees are chargeable with.

Demurrer, held a good Plea : *Because this is such a Covenant as runs with the Land. 2 Ja. 2. B. R.* The

Privy of Estate.

Still lie against the Lessee upon his Covenant.

How to declare against an Assignee of a Term.

All Assignments of Trusts must be in Writing.

*29 Ed. 2. cap. 3.*

What Notice of an Assignment shall discharge the Lessee.

charge the Lessee from Rent. *1 Lev. 32.*

Covenant lies not against an Assignee of a Term for Rent due after the Assignment. *Sans Notice.*

Where Lessor may charge Lessee or Assignee.

accepts the Rent of the

Election determined by Acceptance.

he may have. *3 Rep. 24. b.*

A Man leases by Indenture the Lessee Covenants for himself, his Executors (not Assigns) to repair the House. Covenant lies against the

Covenant was brought for Rent against the Assignee of the Lessee, who pleads, That before any Rent due, he assigned to J. S. and upon a

How to declare against an Assignee of a Term. *Lutw 366.*

All Grants and Assignments of Trusts shall be in Writing, signed by the Party granting or assigning, or by his Will, otherwise to be void. *Stat. of Frauds and Perjuries. 29 Car. 2. Regis. cap. 3.*

The Notice of the Assignment of the Term without the Agreement of the Lessor, or Acceptance of the Rent by him of the Assignee, shall not discharge the Lessor in an Action of Debt for

Covenant for Rent against the Assignee of a Term, for Rent due after his Assignment over to another without Notice, doth not lie. *Showers 340, 341.*

If a Lessee assign his Term, the Lessor may charge the Lessee, or his Assignee, at his Election. And if he Assignee, he hath determined his Election, and shall not have Debt against the Lessee for Rent due after the Assignment; but Covenant I conceive

**Covenant for Rent** lies against the Lessee by the Grantee of the Reversion (after Assignment), there being an express Covenant, and this altho' Acceptance of the Rent had been pleaded. 3 Lev. 233.

The Plaintiff brings Covenant as Assignee of the Reversion. *Curia per 32 H. 8. cap. 34.* The Reversion is vested in the Plaintiff, but not to distrain or bring Debt without Attornment; but he may bring Covenant without Attornment. *Woodward vers' Marshal, & W. Vide Brett & Cumberland's Case in Cro. Jac. 322.* Because the Statute transfers to the Assignee the Privy of Contract, without more Ceremony:

But the Distress, or Action of Debt, is a Remedy incident to the Grant of the Reversion at Common Law, and therefore the Forms required by the Common Law are to be observed. *Lev. 259, 260.* But Attornments are now taken away by the Statute of 4 & 5 Anna, for the Amendment of the Law. *Vide Title Attornment.*

If one brings an Action of Debt upon an Obligation that was given for Performance of Covenants, upon supposition of Breach of Covenants, he could formerly assign but one Breach of Covenant in that Action: For the Assignment of one Breach (if proved) is enough to maintain his Action, and is a Forfeiture of the whole Penalty. But where a Man brings an Action of Covenant, he may assign twenty Breaches, if there be so many Covenants; for there is a particular Damage to the Plaintiff for the Breach of every particular Covenant: And a several Issue must be taken upon every several Breach. And now by a late Statute made 8 & 9 Will. 3. cap. 10. the Plaintiff may, in an Action upon such Bond, assign as many Breaches as he pleaseth. *Vide Title Conditions.*

A Statute Merchant or Staple, Bond, &c. cannot be assigned over to another, so as to vest an Interest whereby the Assignee may sue in his own Name, but they are every Day transferred by Letter of Attorney, &c. *Mich. 22 Ca. B. R.*

Covenant lies for Rent against the Lessee, by the Grantee of the Reversion, after Assignment.

Assignee of a Reversion brings Covenant, it lies without Attornment, but cannot distrain. *Sans Attornment.*

32 H. 8. cap. 34.

But now note, That Attornments are taken away by a Clause in the Statute for the Amendment of the Law.

are to be observed. *Lev.*

4 & 5 Anna.

But one Breach can be assigned for the Breach of a Penalty.

8 & 9 Will. 3. cap. 10.

*Vide Title Conditions.*

A Statute, or Bond, not assignable to transfer an Interest.

Where



The Court favours Assignees by Letter of Attorney to recover to their own Use, in which there is a Covenant not to revoke.

Where a Bond is assigned over, with a Letter of Attorney therein to sue, and a Covenant not to revoke, but that the Money shall come to the Use of the Assignee, although the Obligee be dead; yet the Court will not stay Proceedings in a Suit upon the Bond in the Obligee's Administrator's Name, though prosecuted without his Consent: For that those Assignments to receive the Money to the Assignee's own Use, with Covenants not to revoke, and also with a Letter of Attorney in them, although they do not vest an Interest, yet have so far prevailed in all Courts, that the Grantee hath such an Interest, that he may sue, in the Name of the Party, his Executors or Administrators. *Pas. 12. W. B. R. Deering & Carrington.*

For Assignment of Bail-Bonds.  
4 & 5 Annæ.

For Assignment of Bail-Bonds, by the Statute of 4 & 5 Anne: See Title Bail-Bonds.

Adjourn

# Adjournment.

See First Part 65.

**A** *Adjournment*, is when any Court is determined, and assigned to be kept again at another Time or Place.

*Adjournment, Quid.*

If the Adjournment be of all Writs, Pleas, &c. of one common Return to another, this will not adjourn Pleas by Bill in *Banco Regis*, for upon these Pleas the Continuances are to certain Days, and not to common Returns; and therefore, upon such Adjournments, all the Pleas upon Bills are discontinued. See *Bro. Discont. of Process* 36. *Amendment* 70.

How the Writs of Adjournment must be.

Before the Writ of Adjournment read in Court, the Crier makes three Proclamations; and after it is read, the Crier rehearsed the Effect of the Writ in *English*, for the Solemnity of it, See *Cro. Car.* 11, 12, 13, 27, 200. *Hones* 84, 85. 1 *Syd.* 276. 1 *Lev.* 176.

The Manner of the Adjournment.

The Justices of Assize have Power to adjourn the Parties to *Westminster*, to any other Place in *Itinere suo*, or of their Circuit. 47 *E. 3. 2. Magn.* 71, cap. 12. 2 *Instr.* 26.

To what Places Justices of Assize may adjourn.

47 *E. 3. cap.* 12.

E

Aber=

# Averment.

See Abowry.

Averment of a Plea, *Quid.*

**T**he hoc paratus est Verificare, at the Conclusion of a Plea in Abatement or Bar, is an Oath to prove his Plea, and is called an Averment. Terms of the Law, 37. a.

Want of an Averment, how help'd.  
4 & 5 Annæ.

For want of an Averment, where help'd. See the Stat. 4 & 5 Annæ, for Amendment of the Law.

Administrator *durante Minori Estate*, must aver the Nonage.

Where a Cause of Action is given to the Testator, and he dies, an Administration, *cum Testamento annexo*, is granted *durante Minori Estate* f. s.

Here the Plaintiff must aver in his Declaration, that f. s. is under the Age of 17 Years. For then (*viz.* at 17) there is an End of his Administration.

Needs no Averment of performance of a Promise against a Promise.

There needs no Averment of Performance of a Promise against a Promise, because each Party hath an Action, 1 Lev. 87.

No Averment out of a Will for Lands.

No Averment shall be admitted out of a Will that concerns Land, which ought to be in Writing. 5 Rep. 68. b.

Abowry



# Avowry.

Avowry, See { 1st Part. 64.  
Replevin.  
Seisin.  
Property.  
Damage Feasant.  
Justification.

**A** **W**owry, is where one takes a Distress for Rent, or other Thing, and the other sueth a Replevin; then he which hath taken it must justify for what Cause he took it; and if he took it in his own Right, he must shew it, and abate the taking; and if in the Right of another, he must then make Conusance as Bailiff. Terms of the Law, 38. a.

Avowry and Conusance, what.

In an Avowry for Rent, Seisin must be alledged to be within 50 Years before the making of the Avowry or Conusance, per 32 H. 8. cap. 2. Vide Postea.

Seisin within 50 Years must be alledged in an Avowry. 32 H. 8. cap. 2.

The Lord need not avow upon any Person in certain, yet he must alledge Seisin by the Hands of some Tenant in certain within 50 Years. 21 H. 8. cap. 19. Co. Lit. 268. b.

Avowry may be upon the Land only. 21 H. 8. cap. 19.

An Abowry, which is in the Nature of a Declaration, ought to contain sufficient Matter, whereupon there may be Judgment to have a Return: But of the Avowry, or any Declaration or Replication, wants Form, or omits Circumstances of Time, Place, &c. there the Plea of the other Party may salve such Imperfections, but cannot supply want of Matter of Substance. Rep. 25. a.

An Avowry is in the Nature of a Count, and must be certain, and contain sufficient Matter.

An Avowant shall not be driven to alledge Seisin within the Time of the Statute of Limitations, but that must be shewn on the other Side. 8 Rep. 65. a.

An Avowant shall not be driven to alledge Seisin within the Time of the Statute of Limitations.

Not to shew his Title to his Franchise.

to shew his Title to his Franchise, but only to say generally, That he hath such a Franchise; but in a *Quo Warranto*, he must shew it particularly. 9 Rep. 29. b.

It is not sufficient to say *Possessionatus fuit*; but must set out his Title.

good in Debt for Rent, yet it is not in Replevin: For in Replevin, the Avowant must set forth his Title how he came possess'd. 10 W. B. R. Lutw. 1165. 2 Mod. 70, 71. See Title *Dammage Feasant*.

Where in Trespass, the Defendant must justify under a Warrant.

Need not in Replevin.

from the Steward. The Reason is, In Trespass, it is sufficient to justify the Officer that there was such a Presentment and Arrestment; because this Action tries the Authority: But in Replevin, the Suit is not so much for Damages, as to try the Right; and there it is not enough to set out an Authority, but must make out a Right. *Showers Rep.* 61, 62. See Title *Justification*.

He may avow or justify. But if he justifies, he cannot have a Return.

Traversing the Property is good, either in Bar, or Abatement.

and the Defendant need not to avow for the Return of the Goods, they not being the Plaintiffs, the Avowant is to have a Return. 2 Lev. 92. Cro. Jac. 519.

How Avowry for Dam-  
mage Feasant must be.

cannot Distrain a Stranger's Cattle without a particular Dam-  
mage. 3 Lev. 104.

The Difference between an Avowry and a *Quo Warranto*, is, That in an Avowry the Avowant is not compelled to shew his Title to his Franchise, but only to say generally, That he hath such a Franchise; but in a *Quo Warranto*, he must shew it particularly. 9 Rep. 29. b.

The Defendant avows, That he was possess'd of a Term still in being, and leased it to the Plaintiff. This is naught; for altho' *Possessionatus fuit* be

In Trespass, the Defendant justified under a Presentment in a Court Leet without a Warrant from the Steward it is naught: But in an Avowry, the Bayliff to the Lord, there needs not be alledged any Warrant or Precept

In a Replevin, the Defendant may avow or justify at his Election; but if he justifies, he cannot have a Return, as he shall have if he avows. 3 Lev. 205.

In an Avowry, the Defendant says That the Property is in a Stranger, *absque hoc*, that they were the Plaintiffs; this is good, either in Bar or Abatement

Avowry for Dam-  
mage Feasant in  
Common, but alledged no Damages  
himself; this is naught: Because

Avowry is

One Tenant in Common cannot avow the taking of the Cattel of a Stranger, Damage Feasant, without making himself Bailiff or Servant to his Companion. *Trin. 7 Car. 810.*

They may join in Debt for Rent, but must sever in an Avowry, because it is in the Reality. *Lit. Sect. 316, 317.*

Avowry upon a Tenure of Fealty, Rent, and Suit of Court, the Plaintiff confesseth the Tenure, but says, That neither the Avowant nor his Ancestors were seized of the Services, or any of them, within 50 Years: This is not good; because Fealty, Homage, and such casual Services, may not happen in 50 Years, and so out of the Statute of 32 H. 8. c. 2. of Limitations. 3 Lev. 21.

Where and what manner of Services, or any of them, may be traversed in an Avowry; and what Remedy, in case the Lord encroaches and demands more Services than he ought. See *Woodfole & Mantle. 1 Plow. from 94. to 96.*

A Stranger to an Avowry shall plead nothing but *hors de son Fee*, or what is tantamount; But the right Tenant, altho' a Stranger to the Avowry, being made a Party, may plead in Abatement of the Avowry. 9 Rep. 20. b.

Encroachment by the Donor upon the Donee or Lessor, upon the Lessee shall not bind in an Avowry, as it shall between Lord and Tenant, because the Deed must be produced upon the Avowry; but otherwise it is between Lord and Tenant. 10 Rep. 108.

An Avowry was for a Relief upon the Tenure of Fealty Rent, and Suit of Court, and good, without mention of the Relief; because it is Parcel of the Tenure *de Comuni jure*, and a Flower of it, and if separated from it, must be shewn of the other Side. 3 Lev. 45.

The Defendant need not aver his Avowry with an *hoc paratus est verificare*; because the Defendant in his Avowry is Actor, for he shews his Matter, which is a Count, and is to have

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How Tenants in Common must avow.

Difference between Debt and Avowry.

How it must be for Fealty Rent, and Suit of Court.

32 H. 8. ca. 2.

What Services may be traversed in an Avowry.

What Remedy, where the Lord encroaches.

Who may plead *hors de son Fee*.

Who may plead in Abatement.

What Encroachment of Rent will bind in an Avowry, and what not.

Avowry for a Relief, how to be.

The Defendant needs no more to aver his Avowry, than the Plaintiff to aver his Count.



a Return ; and therefore, as Plaintiff, he shall not aver his Avowry, no more than the Plaintiff shall aver his Count. *Bret & Rigden.* 1 *Plow.* 342. a. and 163. a.

Avowry may be without laying of any Seisin where there is a Deed.

Seisin by Tenant at Will, or for Years, shall not bind.

of Lessee for Years, 2 *H. 6.* 2. b.

How Executors to avow for Lord's Rent.

That the Land continues in the Seisin of the Tenant, who ought to have paid it, or in the Hands of some other who claims by or from him, according to the Statute. *Cra.*

32 *E. 8.* ca. 37.

*Eliz.* 547. See *Co. Lit.* 102. b.

*Hors de son Fee.*

Where Seisin, where Tenure, traversable.

How many Pleas a Defendant or Plaintiff in Replevin may plead.

4 & 5 *Annæ.*

thereto as he shall think necessary for his Defence.

A Man makes a Gift in Tail rendering Rent, he may avow without laying of any Seisin, because the Deed and Reversion gives him a sufficient Privilege. 8 *H. 6.* 18.

Seisin of Services by the Hands of Tenant at Will, shall not bind the Tenant, 8 *H. 6.* 1. 7. Nor by the Hands

If Executors by 32 *H. 8.* ca. 37. avow for Arrears of Rent in Fee accrued to the Testator, they must shew, ought to have paid it, or in the Hands of some other who claims by or from him, according to the Statute. *Cra.*

Where and who may plead *hors de son Fee.* *Danv.* 655.

Where the Seisin, and where the Tenure, shall be traversed. *Danv.* 656.

By the Statute of 4 & 5 *Annæ.* it is Enacted, That any Tenant or Defendant in any Action or Suit, or any Plaintiff in Replevin in any Court of Record, may, (with Leave of the Court) plead as many several Matters

Auterfois acquit, See { Appeal.  
Indictment.

# Annuity,

See Grant.

**A**n Annuity, is a yearly Payment of a certain Sum of Money granted to another in Fee for Life or Years, charging the Person of the Grantor only; but not only the Grantee, but his Heir, and his and their Grantee, shall have a Writ of Annuity: But if a Rent Charge be granted to a Man and his Heirs, he shall not have a Writ of Annuity against the Heir of the Grantor, (altho' he hath Assets) unless the Grant be for him and his Heirs. Co. Lit. 144. b.

An Annuity, what.

Who shall have the Writ.

Against whom it lies.

Lies not for a Rent reserved.

If a Man makes a Feoffment in Fee, reserving a Rent, no Writ of Annuity lies for this: Because the Reservation are the Words of the Feoffor, and no Grant of the Feoffee. Co. Lit. 144.

The Grantee hath an Election to bring a Writ of Annuity, and make it Personal, (if issuing out of Land) or an Assize, Distrain, &c. and make it Real. Co. Lit. 144. b.

The Grantee may make it either Personal or Real.

What determines the Grantee's Election.

Tho' the Grantee distrain for the Rent, yet he may afterwards bring a Writ of Annuity, and Discharge the Land, for the Grantee's Election must be determined by some Action or Suit in some Court of Record: But if the Grantee avow the Taking, this is in the Nature of an Action, and a Determination of his Election before any Judgment given. Co. Lit. 145. a, b.

If a Man recovers in a Writ of Annuity, he shall never have a new Writ of Annuity for the Arrears due after the Recovery, but a Scire Facias upon the Judgment, because the Judgment is always Executory. R. 37. a. Co. Lit. 145.

A Scire Facias only to recover Arrears due after a Judgment.

Arbitrament, See Award.

# Administrator, and Administration.

Administrator, and Admini-  
stration, Vide

1st Part 66.  
Baron and Feme,  
Administrator.  
Debastavit.  
Executor,  
Infant.  
Intestates Estates,  
Will.

An Administrator, what.

**A**n Administrator, is he to whom the Ordinary commits the Administration of the Goods of a dead Man for default of an Executor, and an Action will lie against him, and for him, as for an Executor, and he shall be charged to the Value of the Goods of the dead Man, and no further; and if he be Prosecuted, or a Verdict be against him, he shall not pay Costs.

Account lies against Executor or Administrator of a Guardian.

4 & 5 Annæ.

Administrator shall distribute the Personal Estate between the whole and half Blood.

He may sue for Goods before Possession.

Grantable to the Residuary Legatee, and not next of Kin.

An Action of Account lies against the Executor or Administrator of any Guardian, Bailiff and Receiver, per 4 & 5 Annæ. Vide Title Account.

An Administrator shall distribute the Personal Estate equally between whole Blood and half Blood. 2 Lev. 173.

An Administrator may sue for Goods before Possession; so may an Executor. 8 Rep. 135. b.

Where there is a Residuary Legatee Administration granted to the next of Kin, is revocable and grantable to the Legatee, tho' no Residue at present. 2 Lev. 56.



By the Statute made 4 & 5 W.  
M. cap. 20. for Doggetting of all  
Judgments; It is enacted, That no  
Judgment not Docquetted as that Act  
directs, (which see in the Title Judg-  
ments) shall affect any Purchaser or  
Mortgagee, or have any Preference against the Heirs, Executors,  
or Administrators, in their Administration of their Ancestors,  
Testators, or Intestates Estates.

By the Statute of 22 & 23 Car. 2.  
cap. 10. it is enacted, That after Al-  
lowance made of Debts, Funeral Charges,  
and just Expences, Distribution of what  
Remains shall be made amongst the

Wife and Children, or Childrens Children, (if any such be) or  
otherwise, to the next of Kin to the dead Person in equal Degree,  
or legally representing their Stocks, pro suo cuique Jure, according  
to the Laws in such Cases, and the Rules and Limitations hereafter  
set down, (viz.) One third Part to the Wife of the Intestate,  
and all the Residue, by equal Portions, to and amongst the  
Children of such Persons dying Intestate, and such Persons as  
legally represent such Children, in case any of the said Chil-  
dren be then dead, other than such Child or Children not be-  
ing Heir at Law, who shall have an Estate by the Intestates  
Settlement, or advanced by the Intestate in his Life, equal to  
the Share which shall by such Distribution be allotted to the  
other Children to whom the same is to be made. *Vide the*  
*Statute at large.* And also another  
Statute made 29 Car. 2. cap. 3. and  
30 Car. 2. cap. 6. continued for Se-  
ven Years, with Explanations and Additions; which see in Title  
Intestates Estates; and made Perpetual  
by an Act made 1 Jac. 2. cap. 17.

The Mother ought to have the Ad-  
ministration of the Goods and Chattels  
of her Child, before a Son, or a Bro-  
ther, or a Sister. For there is a nearer Bond of Nature be-  
tween the Child and the Parents, than betwixt the Child and  
any other Collateral Tye of Blood or Kindred; and the Child  
can never sufficiently satisfy the Obligation he hath to his Parents for his  
Being and Education, especially to  
his Mother. 1 Vent. 414, 324. Mol-

de Jure Maritimo 364. And now by the Statute of 1 Jac.  
2. cap. 17. the Act of 22 & 23 Car. 2. cap. 10. and the other  
Act,

What Judgments shall  
affect Administrators.

Stat. 4 & 5 W. & M.  
cap. 20.

The Distribution Act,  
22 & 23 Car. 2. cap. 10,  
how Distribution is to be  
made.

29 Car. 2. cap. 3.  
30 Car. 2. cap. 6.

1 Jac. 2. cap. 17.

Who ought to have Ad-  
ministration, and why.

The nearest of Blood  
shall be preferred in Ad-  
ministration.

Act, is made Perpetual. And it is also enacted, That every Brother and Sister, and their Representatives, shall have equal Share with the Mother.

The Husband shall Administer to his Wife, and the Wife to the Husband.

or next of Kin, as the Ordinary pleases, shall have Administration. *Showers Rep.* 351.

When revokable.

revoked without just Cause, as Lunacy, &c. 1 *Lev.* 157, 186.

When it may be repealed by the Delegates.

*non obstante* the Statute. 1 *Lev.* 305.

An Act of Court, on Evidence of an Administration.

Where Administration shall be granted.

*Bona Notabilia*:

What they are.

*bury*; *Bona Notabilia*, is where the Party who dies had Goods in several Dioceses, to the Value of 10l. and more: And if any other Jurisdiction, then the Prerogative Court shall grant Administration where there are *Bona Notabilia*, then such Administration is void. 1 *Plow.* 281. *Greysbrook* and *Fox*.

Where void.

Administration committed to the Obligor, is no Extinguishment.

Administration, where void.

Where voidable *Bona Notabilia*.

What shall not be accounted *Bona Notabilia*.  
4 & 5 *Annæ*.

If the Daughter marries, her Husband shall take Administration of her Goods, and not her Mother. So also, if the Husband dies, the Wife,

Administration duly granted, according to the Statute, cannot be Re-

Where Administration is granted where not grantable, or *inverse ordine*, it may be repealed by the Delegates.

An Act of the Court was Evidence of an Administration. 1 *Lev.* 25, without Seal, 101.

Administration shall be granted where the Bond is at the time of the Intestate's Death; but upon a simple Contract, it shall be where the Debtor was at the time of the Intestate's Death, unless there be *Bona Notabilia*; which if there are, then it must be granted by the Prerogative Court of Canterbury. 1 *Plow.* 281. *Greysbrook* and *Fox*.

Administration is granted to the Obligor, this doth not extinguish the Debt, but it shall be Assets in his Hands. 8 *Rep.* 136. n.

Administration is granted by the Prerogative Court, where the Intestate had not *Bona Notabilia* in divers Dioceses, it is not void, but voidable. 8 *Rep.* 135. 4. Now, by this Statute 4 & 5 *Annæ*, it is enacted, That the Salary, Wages or Pay, due to any Person

for Work done in the Queen's Docks or Yards, shall not be accounted Bona Notabilia.

The Plaintiff declares against the Defendant as Administrator; he pleads that he is Administrator *cum Testamento annexo durante Minori Estate* *J. S.* But doth not say, That *J. S.* is *Infra Etatem Septemdecim Annorum*. And therefore it was held to be naught; because that is in the Defendants own the Plaintiffs. And when the Executor is Seventeen, the Administration ceases. 5 Rep. 19.

An Administrator, *durante Minori Estate*, cannot sell any Goods, except of Necessity for Payment of Debts, or *ona Peritura*, 5 Rep. 29. b.

Where a Man makes an Infant of tender Years Executor, Administration, *durante Minori Estate*, be granted specially, *ad opus Commodum & Utilitatem* of the Infant, there the Administrator cannot make a Lease. But if it be granted generally, *Re one Minoris Etatis*, he may recover Debts and Duties, and make Leases, which shall be good until the Executor comes to Seventeen, and also (as some say) till he Enters, Rep. 67. a. But, per totam Curiam, where Administration is granted, *durante Minori Estate*, there Administration shall not determine until the Party come to Twenty one Years of Age: Because the Statute for granting of Administrations requires Administrators to give Bond, which an Infant cannot do. Pas. 8 W. B. R.

Where an Administration is granted *cum Testamento annexo*, to the Use of a Legatee, the Administration determines when the *Cestuyque Trust* comes to Seventeen Years of Age. 13 W. B. R.

Where an Administration is granted *durante Absentia*, it ought to be entered in the Declaration upon such Administration, that the Party was then at such a Place out of the Realm,

How to declare as Administrator, *cum Testamento annexo durante Minori Estate*.

17 Years of Age.

Consuance, and not in

Ceases at 17.

What an Administrator, *durante Minori Estate*, may do.

Good till the Executor comes to 17.

When Administration, *durante Minori Estate*, determines.

21 Years of Age, and why.

Administration, *cum Testamento*, granted in Trust.

When it determines.

Where Administration is granted *durante Absentia*.

Where



How, and by whom, Administrations are to be granted.

**C**ase, there the Plaintiff

By an Ordinary.

**a Place.** But where the Law takes no notice of the Jurisdiction of that Court where the Administration was granted, as

By an Archdeacon.

*Cui Commissio Administrationis predict' de jure pertinuit.* For

General Jurisdiction.

Particular Jurisdiction.

**farther Notice of the Acts done by Vertue thereof, than is**

**Prerogative.**

**the surest way is to say always, (except in Case of a Prerogative Administration) Cui Commissio Administrationis predict' de jure pertinuit.**

Administrations revok'd, new granted.

Where the Residue is not disposed of, it shall go in Administration.

not have it, but the next

**Stat. 22 & 23 Car. 2. cap. 10.**

Residuary Legatee dies, who shall have Administration.

How to declare for Moneys received.

**Where** Administration is granted by such a Jurisdiction as the Law takes Notice of, as a Bishop, who hath a general Power over his Diocese, need only to say, That the Letters of Administration were granted to him by the Bishop, as Ordinary of such a Place. But where the Law takes no notice of the Jurisdiction of that Court where the Administration was granted, as where it was granted by an Archdeacon, &c. there it must be said, where the Law takes Notice of a General Jurisdiction, it doth there take Notice of the Acts done by Vertue thereof: But where there is a Particular Jurisdiction, there it takes no Notice of the Acts done by Vertue thereof, than is made appear by the Party that Claims any Privilege in Law by them. But

**What** shall be done where Administrations are revok'd, and new granted. 8 Rep. 135. b, 136. a. Vide Saunders's Rep.

**Where** a Man makes an Executor, and gives him a Legacy, and doth not dispose of the Residue of his Personal Estate, the Executor shall to the Use of the Relations, and they shall have their distributive Part according to the Statute of 22 & 23 Car. 2. cap. 10.

**A** Residuary Legatee dies before Probate, his Executor shall have Administration, and not the next of Kin to the first Testator. Show. Rep. 26.

**Where** Moneys of the Intestate are received by a Stranger, after the Death of the Intestate, the Admini-

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strator may Declare for Money received to his own Use  
6 W. & M. But it shall be Assets in his Hands.

Where any Judgment after Verdict (Note, after Verdict only) shall be had by, or in the Name of, any Executor or Administrator; the Administrator, *de bonis non*, may sue out Scire facias, and take out Execution upon such Judgment. 17 Car. 2. cap. 8.

A Scire facias, *quare dampna assideri non debent*, was sued out against an Administratrix upon the new Statute for preventing of Vexatious Suits, &c. upon an Interlocutory Judgment against the Intestate. To this, she pleads Judgments recovered against her upon Bonds entred into by the Intestate, and adjudged no Plea: *Because the Act doth not allow the Executor or Administrator to say any thing in Bar of the Action, more than the Testator or Intestate could have had when living, which was only in Arrest of Judgment, but he shall not be chargeable with Costs.* Smith's Case in B. R. 3 Anne.

An Executor recovers Judgment by Default, and dies Intestate, an Administration, *de bonis non*, is granted. The Administrator, *de bonis non*, brings Scire facias to have Execution upon this Judgment, and adjudged that it did not lie. Because the Statute 17 Car. 2. cap. 8. extends only to Judgments after Verdict, and not by

*il dicat.* Mich. 34 Car. 2. B. R. The Words whereof are these: *And be it Enacted by the Authority aforesaid, That where any Judgment after a Verdict shall be had by, or in the Name of, any Executor or Administrator; in such Case an Administrator, de bonis non, may sue forth a Scire facias, and take Execution upon such Judgment.* See Title Feofailes.

What Remedy against Administrators of Executors in their own wrong. See Title Executor, and the Statute of 30 Car. 2. cap. 7. Revived. 1 Jac. 2. cap. 17. and 5 W. & M. cap. 24. sect. 12.

Administrator, *de bonis non*, may have Scire fac. upon a Judgment after Verdict recovered, by Executor or Administrator.  
17 Car. 2. cap. 8.

Sci. fa. upon the new Statute for preventing Vexatious Suits:  
8 & 9 W. 3. cap. 10.

Death after the Interlocutory Judgment.

Cannot plead in Bar of the Action.

*but he shall not be chargeable with Costs.* 3 Anne.

Administrator, *de bonis non*, shall not have, by the Statute of 17 Car. 2. cap. 8. a Scire fac. upon a Judgment recovered by an Executor by Default; because that Statute extends only to Verdicts.

17 Car. 2. cap. 8.

Administrators of Executors, *de son Tort*.

1 Jac. 2. cap. 17. and

By whom Administration  
granted, omitted in the  
Declaration.

This is good after a Verdict; but naught upon a Demurrer.

6 W. & M. B. R.

It was moved in Arrest of Judgment after a Verdict, that it doth not appear in the Declaration by whom Administration was granted.

Arrest.

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# Arrest.

Arrest, See { First Part 70.  
Actions.  
Attorney.  
Latitat.

**An Arrest**, is when one is taken and restrained from his Liberty by some Legal Officer, who hath, by some Legal Process, Authority given him for so doing.

An Arrest, what.

It is not sufficient for a Bailiff who hath a Warrant against a Man to say, I Arrest you at the Suit of A. B. Plaintiff in the Writ; but the Officer must actually lay hold of him, or touch him, otherwise it is no Arrest. Trin. 3. Annæ B. R.

An Arrest, what. What is not an Arrest.

An Arrest in the Night is lawful, as well at the Suit of the Party, as at the Suit of the King. 9 Rep. 65. b. 6. a. See more in Title Sheriff.

An Arrest in the Night is lawful.

A sworn and known Bailiff need not to shew his Warrant, although the Party demands it; neither is any other Bailiff bound to shew his Warrant, unless demanded. 9 Rep. 69. a, b.

What Bailiff is not bound to shew his Warrant, and what is.

How to justify the Entry into the House of a Stranger to make an Arrest. Lutw. 1432, 1433.

How to justify an Entry into a Stranger's House to make an Arrest.

Where an Action will lie for Vexatious Arrests in Inferior Courts. 1571, 1572.

Where an Action lies for Vexatious Arrests in Inferior Courts.

All Arrests upon a Sunday are void, by a Statute made tempore Caroli Secundi; which see Postea in Title Sunday. 29 Car. 2. cap. 7.

An Arrest upon a Sunday is void. 29 Car. 2. cap. 7.

Appearance.

# Appearance,

Appearance, See { First Part 74.  
Attorney.  
Declaration.  
Infant.

**A**pppearance in the King's-Bench, is the Defendant filing either of Common Bail or Special Bail, if the Action be by Bill; but if it be by Original then the Appearance must be with the Philazer of the County where the Arrest was. But if the Appearance be in the Common-Pleas, then it must be enter'd with the Philazer there: But if it be by Writ (which in some few Cases it is) it must then be enter'd with the Prothonotary.

When to move to alter a *Venue*.

next after the Appearance, or the Term wherein the Appearance was, the Defendant must that very Term (and cannot afterwards) move to alter the *Venue*; neither can the Plaintiff after the *Essoin-Day* of the subsequent Term after the Appearance,

When the Plaintiff may alter his own *Venue*.

In all Transitory Actions, when the Declaration came in above Six Days before the End of the Term,

the Defendant may alter his own *Venue*, tho' it is, would pay Costs, or give an Imparlance. *Pas. 21 Car. 2. R.*

Judgment against the Casual Ejector, not good, if Common Bail be not filed in 14 Days after Appearance.

Judgments in Ejectment against Casual Ejectors, for want of an Appearance shall be set aside, and Respite granted, if no *Latitat* has been sued out against, nor Common Bail filed for such Casual Ejector,

Nominal Defendant, within 14 Days after such Appearance. *Trin. 4 W. 3. M. per Curiam.*

In what Cases Common Bail must be filed.

In all Cases, where Process may be sue forth to take the Body of the Person, if an Appearance only, and

Bail is required, there every such Person must, upon an Arrest

Appearance, what.

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cause Common Bail to be filed, which is an Appearance upon Record.

Where the first Process in an Inferior Court is a *Capias* (which ought not to be) it is salved by an Appearance. *Lutw.* 954. Because the Defendant hath by his Appearance admitted the Process, by which he is brought into Court, to be Legal.

The Principal cannot now give a Warrant of Attorney (as the Practice formerly was) for an Attorney to appear for his Surety.

If where Special Bail is required, the Plaintiff's Attorney doth (before any Bail put in) deliver a Declaration to the Defendant's Attorney (unless it be only to shew such a Cause of Action as requires Bail), he shall not afterwards compel the Defendant to put in good Bail; but Common Bail shall serve.

In the Court of Common-Pleas, upon a Special *Capias* issued forth, with the Cause of Action therein express'd, the Defendant is, by the Rules of that Court, to appear and plead in one Term and the same Term. But it is not so in the King's-Bench where the Suit is commenc'd by Bill, for there he hath Liberty to imparle to the next Term. But the Practice is the same in the King's-Bench with that in the Common-Pleas, where the Action is by Original: And the Reason of it is, That when it is by a Special Original, the Declaration is comprised in the Writ, which is not so in a *scire facias*.

Two *Nichils* returned upon a *Scire facias*, amount unto a *Sciri feci*; whereupon if the Plaintiff gives a Release, and the Defendant doth not appear, the Plaintiff shall give his Judgment, *quod habeat Executionem*, by Default. But where a Man hath a Release, or any other Matter which he might have pleaded, there he shall not be absolutely concluded without a *Sciri feci* returned. For after Two *Nichils*, he

Where an Appearance in an Inferior Court admits the Process, which brought him into Court, to be good.

Principal cannot authorize an Attorney to appear for his Surety.

Where Delivery of a Declaration dispenses with the Bail.

When to plead when the Writ is Special, with the Declaration in it.

*In Com. Banc.*

And why.

Where Judgment shall be by Default upon a *Scire facias* for not appearing.

*Audita Querela* lies upon two *Nichils*, not upon a *Sciri feci*, in Case of a Release.

may



may have his Writ of *Audita Querela*, which he cannot have after the Return of a *Sciri feci*.

The several Ways by which a Defendant may appear.

There are but Four several Ways by which a Defendant can appear, (*viz.*) either in *Propria Persona*, per *Attornatum*, per *Guardianum*, or per *Proximum Amicum*: And regularly the first Two are the common Ways, and the others are Privileges given to Infants under Age. *Show. Rep.* 165.

**Affidavit.**

# Affidavit.

Affidavit, See { 1st Part 78.  
Evidence.

**A**n Affidavit, generally speaking, is an Oath in Writing, sworn before some Person who hath Authority to take such Oath, and shall be made use of and read in Court upon Motions, but not upon Trials.

Affidavit, *Quid.*

Commissioners appointed to take Affidavits for the several Courts.

29 Car. 2. ca. 5.

By an Act made 29 Car. 2. ca. 5. it is enacted, That the Chief Justice, and other Justices of the Court of Kings Bench, or any Two of them, whereof the Chief Justice of the Court of Kings Bench for the Time being to be One for the Court of Kings Bench: And the Chief Justice of the Common Pleas, and the rest of the Justices for the Time being, or any Two of them, whereof the Chief Justice of the same Court to be One for the Common Pleas: And the Lord Treasurer, Chancellor, or Barons of the Exchequer, for the Time being, or any Two or more of them, whereof the Lord Treasurer, Chancellor, and Chief Baron, to be One for the said Court of Exchequer; may by one Commission or Commissions, under the several Seals of the respective Courts, empower what and as many Persons as they shall think fit and necessary, in all and every the several Shires and Counties in England, Dominion of Wales, and Town of Berwick upon Tweed, to take and receive all and every such Affidavit and Affidavits, as any Person or Persons shall be willing and desirous to make before any of the Persons so impowred, in or concerning any Cause, Matter, or Thing, depending or hereafter to be depending, or in any wise concerning any of the Proceedings to be in any of the respective Courts.

Also the Judge of Assize in his Circuit may take and receive any Affidavit, that any Person shall be willing and desirous to make before him, in or concerning any

Judges of Assize may take Affidavits.

Cause, Matter, or Thing, depending or to be depending, or in any wise concerning any Proceedings to be in the said Courts of Kings-Bench, Common-Pleas, and Exchequer, or any of them.

Which Affidavits may be filed, and then may be read.

all the said Courts as other Affidavits are; and the same shall be of the same Effect as Affidavits taken in Court are.

To pay but 1 s. besides the King's Duty.

No Dilatory Plea to be received, until Affidavit of the Truth thereof, or probable Matter.

4 & 5 Ann. c. 16.

Before whom Affidavits are to be made.

or Commissioner authorized by the said Act, if the Cause be there depending.

The true Place of Habitation to be inserted.

Which Affidavits shall be filed in their several and respective Offices of the said Courts the same do concern, and then be read and used in

Provided, that the Party who takes the same shall receive but 1 s. and also that the King's Duty shall be paid to the proper Officer.

No Dilatory Plea shall be received in any Court, unless the Truth thereof be proved by Affidavit, or some other probable Matter shewn, to induce the Court to believe that the Fact is true. *Vide Stat. 4 & 5 Ann. c. 16.*

An Affidavit, touching a Cause depending in this Court, must be made before one of the Judges of this Court

The true Place of Habitation, and true Addition of every Person, who shall make an Affidavit, shall be inserted into his Affidavit.

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# Addition.

See First Part 80.

**A**n Addition, is that which is given to a Man over and above his proper Name and Surname, viz. to shew of what Estate, Degree, or Office he is of, and of what Town, Vill, or County.

Addition, what.

In all Actions of Trespass, and other Actions sued by Original, where the Cause of Action is alledged to be *Vi & Armis*, or against the Peace of the King, a true Addition of Degree, Quality, or Mystery, and the true and certain Place of the Abode of every Defendant, must be put in at the Peril of the Plaintiff's Attorney. *Per Curiam*, 15 Car. 2. The Reason of making of this Order, was this: Before the Act which was made for the taking away of Fines for *Capiaturs*, the Clerks of the Crown-Office used to take from the Judgment Rolls all the Judgments which were entred with a *Capiatur*, and then they did thereupon sue out Process of Outlawry; and because if the Addition was not there, they could not tell certainly who was the Defendant, nor where he lived.

The true Addition to be in all Actions of Trespass, &c.

The Cause of making this Order.

Additions how to be pleaded when with a *Nuper*, and when without. *Lutw.* 40. *Vide Stat.* 1 H. 5. ca. 5. And what are good Additions according to that Statute, and what not. *See* 2 *Inst.* 668, 669.

How Additions to be pleaded.

1 D. 5. ca. 5.

Additions to be inserted into Affidavits.

There ought to be inserted into all Affidavits, the Additions and Habitations of the Parties who make them.

## Addition.

And also into Writs de  
*Excommunicato Capiendo*.

1 W. 5. ca. 5.

5 Eliz. ca. 23.

What Addition shall be  
according to the Degree.

Addition in *English* to  
an Indictment, and good.

Where the Advantage of  
taking Exception to the  
Want of Addition, shall be  
lost.

Act. 2 Inst. 670. By pleading to Issue it is admitted. Cro. Jac. 610. A bad or no Addition is cured by the Appearance of the Parties. 1 Keb. 883.

The Writ, de *Excommunicato Capiendo*, must contain a sufficient Addition of the Party excommunicated, according to the 1 Hen. 5. ca. 5. or else the Party shall not incur the Penalties of the Statute, 5 Eliz. ca. 23.

If one be of the Degree of a Duke, Marquess, Earl, Viscount and Baron, he shall have the Addition of the most worthy Dignity, viz. of a Duke. 2 Inst. 669.

The Addition of the Parties indicted may be in *English*, as Weaver, Taylor, &c. 1 Syd. 101.

If the Defendant hath no such Addition as the Act requires, and yet appears upon Process, and pleads, taking no Advantage thereof by Exception, he hath lost the Benefit of the

Award.

# Award.

Award, See { 1st Part 80.  
Pleas.  
Attachment.

**A**n Award, is in the Nature of a Judgment or Sentence, in which there ought to be Plainness, and nothing left for Collection and Inference, for it ought to contain the Judgment of the Arbitrator himself, and not of another upon his Words. *Yelv. 98.*

An Award, *Quid.*

The Intent of an Arbitrator cannot be explained by Averment. *Dy. 242. b. 1 Rol. R. 263. Hob. 50.*

No Averment can explain the Arbitrators Intent.

To an Award, Five Things are requisite; 1. Matter of Controversy; 2. A Submission; 3. Parties to the Submission; 4. Arbitrators; 5. Giving up of the Award. *Hardr. 44.* Where also see much good Matter about Awards.

What Things are requisite to make a good Award.

By the Statute of the 9 & 10 W. 3. cap. 15, it is enacted, That after the 1<sup>st</sup> of May 1698. all Merchants, Traders, and others, desiring to end any Controversie, Suit or Quarrel (for which there is no other Remedy but by Personal Action or Suit in Equity) by Arbitration, to agree, That their Submission of the Suit to the Award or Umpirage of any Person or Persons, should be made a Rule of any of his Majesty's Courts of Record, which the Parties shall choose, and to insert such their Agreement in their Submission, or the Condition of the Bond or Promise. And upon producing an Affidavit of such inserting, and upon ordering and filing such Affidavit in the Court so chosen, the same may be entred of Record in such Court:

How Awards shall be made, and prosecuted by the 9 & 10 W. 3. ca. 15.

To be made a Rule of Court.

An Affidavit of the Matter.



And a Rule of Court shall thereupon be made, That the Parties shall submit to, and finally be concluded by such Arbitration or Umpirage: And in Case of Disobedience thereto, the Party neglecting or refusing to perform the same, shall be subject to all the Penalties of contemning a Rule of Court: And the Court on Motion shall issue Process accordingly, which shall not be stop'd or delayed, unless it appear on Oath, That the Arbitrators or Umpire misbehaved themselves, and that such Award was corruptly or unduly procured; in which Case, such Arbitration or Umpirage shall be void, and set aside by any Court of Law or Equity, so as such Corruption, or undue Practice, be complained of in the Court where the Rule was made for such Arbitration, before the last Day of the next Term after such Arbitration made and published to the Parties.

**Note,** This Statute extends only to Submissions of such Matters, for which there is no other Remedy but by Personal Action or Suit in Equity. See *Dart.* 513, 514.

An Award to pay Money at the House of a Stranger, where good, and where not.

An Award that is made, that one of the Parties, who submitted themselves to the Award, shall pay Money in the House of a Stranger, is not good, unless he may come to the House, and be no Trespasser; but if he cannot, then this is to Award him to do a Thing which will make him a Trespasser, and so liable to an Action, which is unreasonable. *Mich. 22 Ca. 2. B. R.* But between *Taverner* and *Skingle*, *Cro. Car. fol. 266.* it was held otherwise after a long Debate, the Stranger's House there being a common Inn; but if the Award be to pay the Money in the House of one of the Parties that submitted to the Award, such an Award is good; for it implies a Licence from the Party for him to pay it there.

**Note,** There is a Diversity where it is to pay in the House, and where at the House of J. S. for if he cannot get Leave to pay it in the House, he may go to the Door, and pay it there, without being a Trespasser, *Godb. 255. 1 Rol. R. 6. 2 Bulst. 40.* But if it be to be paid in or at the House of J. S. its good either Way. 3 *Lev. 153.*

To pay Money at the Scrivener's House who drew it up, is good.

An Award to pay Money at the Scrivener's House who drew the Award, is good; because he, drawing of it, shew'd his Consent there.

*uniq. Trin. 34 Ca. 2. B. R.*

An Award to pay the Plaintiff's Charges, and the Plaintiff gave in a Bill thereof, which came to 40 s. This is good by the Bill delivered in.

To pay the Plaintiff's Charges.

3 Lev. 18.

A Release of all Demands, awarded generally, without fixing of any Time, is intended until the Time of the Submission, and good; but of all Demands at the Time of the Award, is void, because it is out of the Submission.

A Release is awarded how to be.

Where the Words of the Submission are *ita quod*, they make their Award of all Differences; there the Submission is Conditional, and, says

*Ita quod* restrains the Arbitrators in Point of Time.

the Plaintiff's Council, *Ita quod* restrains the Arbitrators in Point of Time only, but not the general Authority given by the Submission. *Lutw.* 1628. See more Cases upon *Ita quod*, *Darro.* 517.

An Award made of one Side only, is void. *Hob.* 49. 2 *Sand.* 190. 8 *Rep.* 8. a.

An Award of one Side only, is void.

Where the Defendant pleads an Award, if he doth not plead an Execution of it, it is naught. 2 *Rep.* 55. 2 *Sand.*

Pleading of an Award without Execution of it, is naught.

In all Actions where Damages only are to be recovered, Arbitrament or Accord, with Satisfaction, are good Pleas. 6 *Rep.* 44. a.

Arbitrament a good Plea, where Damages only are to be recovered.

Where the Sum that was awarded was lost by the Tender, it being Collateral Thing. 3 *Lev.* 24.

Where Tender in an Award lost the Sum awarded,

An Award that they shall acquit each other, is good. 3 *Lev.* 18.

To acquit each other, good.

An Award may be void in some Part, and yet good in another Part, viz. If the Award makes an End of

It may be void in Part, and good in Part.

all the Differences submitted unto the Arbitrators by the Parties. *Pope and Bret.* 2 *Sand.* 293.

If an Award be, That a Bond shall be given with Sureties for the Payment of a Sum of Money; it is

A Bond to be given with Sureties, is naught.

void as to that Part for the giving of Security, and also for not saying in what Penalty the Bond shall be, and good for the other. 2 *Lev.* 6. 5 *Rep.* 77. b.

A Bond entred into without Sureties, is a good Performance.

An Award that J. S. a Stranger, shall be bound, is void.

to the Entry into an Obligation by the Stranger, and the Obligor is not bound to perform it, because it is out of the Submission. *Moor & Bedle. 10 Co. 131. a.*

An Award void for Uncertainty of what Penalty the Bond is to be.

Also because the Wife was no Party to the Submission.

Condition to perform an Award, Revocation of Power is a Forfeiture of the Bond.

in not standing to the Award. *8 Rep. 82. a.*

A Stranger bound, that A. shall stand to the Award.

Condition to stand to the Award of, &c. This Submission is good. *Trin. 9 W. Styles 441. 1 Rol. 248, 255. 2 Rol. Rep. 1.*

Where an Award that a Thing shall be done to a Stranger, is good.

by the Doing of it: For every Award is intended in Law to be made for the equal Benefit of the Parties that submitted unto it.

If an Award be good in any Part, it will hold.

Part that is good, an Action will lie for that Breach: For so much it shall be accounted a good Award, and is to be performed; and the rest of the Award, tho' imperfect, shall not vitiate that Part which is good. As if an Award be made

Tho' void to the Stranger, shall be good against the Obligee.

## Award.

Also, where such an Award is made, yet a Bond entred into without Sureties, is a good Performance of the Award. *Mich. 5 W. & M. Rol. 166.*

If an Award be, That one shall pay 10 l. to another, and that J. S. a Stranger, shall enter into a Bond to pay it such a Day: This is void, as

to the Entry into an Obligation by the Stranger, and the Obligor is not bound to perform it, because it is out of the Submission. *10 Co. 131. a.*

An Award, that the Defendant should enter into a Bond, that the Plaintiff and his Wife should enjoy such Lands; and held void for the uncertainty of what Penalty, and also because the Wife was no Party to the Submission. *5 Rep. 77. b.*

A Man is bound to stand to an Award, and afterwards by Deed, revokes the Power given by him to the Arbitrators (which he may do). This is a Breach of the Condition.

*8 Rep. 82. a.*

There were Differences between A. and B. and C. as Attorney for A. became bound in a Bond, with a Condition to stand to the Award of, &c. This Submission is good. *Trin. 9 W. Styles 441. 1 Rol. 248, 255. 2 Rol. Rep. 1.*

An Award, that a Thing shall be done to a Stranger, is a good Award, if it appears that the Parties, who submitted to the Award, have Benefited by it.

by the Doing of it: For every Award is intended in Law to be made for the equal Benefit of the Parties that submitted unto it.

If an Award be good in any Part, it will hold.

Part that is good, an Action will lie for that Breach: For so much it shall be accounted a good Award, and is to be performed; and the rest of the Award, tho' imperfect, shall not vitiate that Part which is good. As if an Award be made

Tho' void to the Stranger, shall be good against the Obligee.



good against the Obligor, and he must perform it, *Mich.*  
to *Jac. B. R. Gray and Wicker.*

If an Award be good in Part, and void in Part, the Good shall be performed. 10 *Rep.* 131. And if Releases shall be awarded, they shall be taken to be mutual. 2 *Lev.* 3.

An Arbitrator cannot Delegate or Transfer the Power given him by the Parties that submitted to the Arbitration; for it is contrary to the Submission; but an Arbitrator may refer a ministerial Act touching the Arbitration to another: For such Act shall be accounted to be done by the Arbitrator himself, and the other that did the Thing shall be accounted but his Servant.

Where an Award is to be made by Arbitrators, and that if they do not make it by such a Day, then by an Umpire; the Arbitrators before the Day make a void Award: And afterwards the Umpire within his Time makes his Award, the Umpire's Award shall stand; because the void Award of the Arbitrators is no Award.

An Award good in Part, and void in Part, the Good shall be performed.

An Arbitrator cannot Assign over his Power to another.

Arbitrators make a void Award, and the Umpire a good one.

A Bond cannot be submitted.

Cannot make an Award of a Freehold.

But of Matters re-

*De premissis in Conditione*, shall be intended all Matters, till the contrary appears.

Where the Submission is without Limitation of Time, and where till the Time of the Award.

Where the Impossibility of the Act to be done, will be a good Excuse:

good

A Bond is not submittable to an Award, because it is a Debt certain; but it may be submitted with other Matter. 1 *Lev.* 293. *Cro. Eliz.* 422.

Arbitrators cannot make an Award of a Freehold, so as to adjudge the Land of one to another: *Hard.* 43, 45. See *Danv.* 513. Nor of a Lease, 514. But of Matters relating to Land, they may.

An Award, *de premissis in Conditione*, shall be intended to be made of all Matters referred until the contrary be shewn on the other Side. 8 *R.*

4. A Diversity was taken where an Award is generally without Limitation of Time, and where till the Time of the Award; for in the last Case, if new Controversies are averred, the Award is void. 3 *Lev.* 188. 344.

If a Thing be possible, and afterwards by the Act of God becomes impossible, to be done, that will be a

And where not.

possible, that is no Excuse. 22 E. 4. 27. Cro. Eliz. 815.

How when one Partner only submits.

Award; and thereupon they are awarded to pay Money. Tho' the other Partners are not bound thereby, yet he that submitted must perform it. 2 Mod. 227, 328.

Awards void for Uncertainty.

Days Work, is void for the Uncertainty of the Sum he should pay, and cannot be help'd by Averment. 2 Sand. 292.

An Award may be pleaded where an Accord may.

See 6 R. 43. b. See 9 R. 78.

What Award shall be a good Bar to the Action.

Refusing to perform the Award, is no Bar to the Action.

How to plead an Award.

that it should have been, *non reddiderunt* their Award in Scrutiny. New Bendl. 97. Pl. 143.

How Performance of an Award must be pleaded.

but must shew the Award, and how he has performed. More 3. Pl. 9. 2 Bulst. 93. Danv. Abr. 576.

Where the Plaintiff must in his Replication shew a Breach of the Award.

also shew the Breach, for without that he hath no Cause of Action. Yelv. 152.

good Excuse. Jones 179. Win's Case. But if the Act of a Stranger interposes, which makes the Thing impossible, which makes the Thing impossible.

If a Partner on the Behalf of himself, and the other Partners, submits, &c. and Promises to perform the

An Award to pay so much as is due in Conscience, is void. Stiles, R. 11.

And also an Award to pay for certain

It is a General Rule, That where an Accord with Satisfaction may be pleaded, an Award may be pleaded.

When any Thing is awarded to be paid in Satisfaction of the Action, it is a good Bar to the Action. F. Abr. Arbitrament 21.

If the Defendant refuses to perform the Award at the Day, this Award is no Bar of the Action. Br. Arbitrament 12. & 5.

The Defendant pleads, that the Arbitrators *non deliberaverunt* their Award in Scriptis, and held naught; it

In Debt upon a Bond for Performance of an Award, the Defendant cannot plead Performance generally.

Debt upon a Bond conditioned to perform an Award, the Defendant pleads *nullum fecerunt Arbitrium*, the Plaintiff replies, and shews the Award; he must

Appropriation, See Impropriation.

# Alien.

See Denizen.

**O**f Aliens, who are Persons born out of the King's Alliance: There are Two sorts, viz. Alien Friends, which are of those Countries which are in Peace and League with us; and Enemies, who are of those Countries which are in War with us.

Aliens, who are:

Who shall be said to be an Alien, and who a Subject.

Regularly there are two Incidents necessary to make a Subject born; First, That his Parents at the time of his Birth be under the actual Obedience of the King: Secondly, That the Place of his Birth be within the King's Dominions. 7 R. 18. a. *Calvin's Case*.

Those which were born in Norway, and under the actual Obedience of the Kings of England, were Subjects born. 7 Co. 20. b. So are those which are now born in the English Plantations. *Vaugh. 297.*

Foreign Plantations.

If one of the Kings Ambassadors in a Foreign Country hath Issue there by his Wife, being an English Woman, by the Common Law they are Natural-born Subjects. 7 R. 18. a. See the Statute of 25 Ed. 3. c. 2.

Children of Ambassadors are Natural-born Subjects.

An Alien may Purchase Lands, but the King upon Office found shall have it. Co. Lit. 2. b. But nothing vests in the King till Office. 1 Leon. 7. 4 Leon. 82.

An Alien may Purchase, but the King after Office shall have it.

An Alien born may be pleaded Abatement, or Bar; if it be pleaded Abatement, the Plaintiff may Reply, That he is Indigena, born at B. in Com. S. and not Alienigena, hoc petit quod inquiratur per Patriam, &c. *Rastal's Entries 244. a.*

How an Alien born may be pleaded.



**Alien.**

### How in Abatement.

## And how in Bar.

must Reply, That he is Indigena, born at C. in Com. D. And then the Defendant must again say, That the Plaintiff is an Alien, born at Roan, &c. beyond the Seas. Absque

## Travel.

this Traverse. *Raft.* 549. *b.* 550. *a.* Mich. 8 W. B. R.

**Devise of Lands to an Alien, is void.**

Plaintiff's Testator an Alien.

Replication, that he came here by the King's Licence.

because it doth not appear but that the Testator came into Eng

• Continuance amounts to a Licence.

**An Act for naturalizing  
of the Children of Sol-  
diers born beyond Sea.**

9 & 10 Wm. Cap. 20.

abroad during the War with France, the Parents of such Children having been in the Service of the Government.

How and when to be done.

The Act of 11 & 12 W.  
cap. 6. to enable his Na-  
tural-born Subjects to in-  
herit the Estates of their  
Ancestors, Lineal or Col-  
lateral, altho' their Fathers  
or Mothers were Aliens.

son and Persons, being the King's Natural born-Subjects, within any of his Realms or Dominions, shall and may hereafter lawfully inherit, and be inheritable, as Heir or Heirs to any Ho-

& Mich. 8 W. B. R. See Calvin's Case.  
 7 R. 1. 9. b. But where the Defendant pleads in Bar, that the Plaintiff is an Alien born, there the Plaintiff digena, *born at C. in Com. D.* And then again say, *That the Plaintiff is an Alien, born at Roan, &c. beyond the Seas. Absque hoc,* That he is *Anglicus de Nativitate*: And the Plaintiff must take Issue upon

A Debase of Land to an Alien, is  
void. 1 Lev. 25.

The Defendant pleads in Bar, that the Plaintiff's Testator was an Alien. The Plaintiff replies, That from the making of the Bond to his Death, he remained in *England* by the Kings Licence: And the Replication held good, but that the Testator came into *England* in time of Peace, and hath for all that Time quietly continued there, which shall amount unto a Licence:

There is an Act made 9 & 10 W.  
cap. 20. for the Naturalization of the  
Children of such Officers and Soldiers,  
and others the Natural-born Subjects  
of this Realm, who have been born  
with France, the Parents of such Child  
service of the Government.

The Manner how it is to be done, and when and where. *Ibid.* Sect. 4 & 5

By an Act made 11 & 12 W. 3. c. 26  
Intituled, *An Act to enable his Majes-  
ties Natural-born Subjects to inherit the  
Estates of their Ancestors, either Lineal  
or Collateral, notwithstanding their Fa-  
ther or Mother were Aliens. It is  
Enacted, That all and every Per-*

King's Natural born-Subjects, with  
 minions, shall and may hereafter law-  
 fully, as Heir or Heirs to any Ho-  
 norable

hours, Manors, Lands, Tenements or Hereditaments ; and make their Pedigrees and Titles by Descent from any of their Ancestors, Lineal or Collateral, altho' the Father and Mother, or Father or Mother, or other Ancestor of such Person or Persons, by, from, through, or under whom he, she, or they, make or derive their Title or Pedigree, were, or was, or is, or are, or shall be, born out of the King's Allegiance, and out of his Realms and Dominions, as freely, fully and effectually, to all Intents and Purposes, as if such Father or Mother, or Fathers or Mothers, or other Ancestor or Ancestors, by, from, through, or under whom he, she, or they, shall or may make, or derive their Title or Pedigree, had been Naturalized or Natural-born Subject or Subjects within the Kings Dominions: Any Law, Custom, or Usage to the contrary notwithstanding.

Foreigners are not admitted to the Choice of Knights of the Shire, Burgesses, &c. but shall have the Benefit of a Pardon of Offences against Penal Laws, and other common Offences, if they were here at the Time of the Pardon. *Hob. 270.*

An Alien Friend may Trade, buy, Sell, and take a House to live in as well as an *English* Man, and may maintain any Action for the same: but an Alien Enemy cannot. *Terms of Law, 27.*

See the Statute of 32 H. 8. cap. 16. cap. 13. which makes void Leases made to Alien Artificers, or Handy-men, and what Resolutions and Readings there have been upon this Statute. See 1 *Syd.* 309. 1 *Sand.* 6. 8. 1 *Syd.* 357. 3 *Mod.* 94. So if an Alien Friend, who is not a Merchant, purchases a Lease of a House for his Habitation, the Law shall have it. *Co. Lit. 2. b.*

An Alien Friend may be an Administrator, and shall have Administration of Leases as well as Personal Things, because he hath them. *Auter Droitt. Cro. Car. 8. 1 Ventr. 417.*

Aliens shall have no Vote in Election of Parliament Men :

But shall have the Benefit of a Pardon for common Offences.

What an Alien Friend may do.

What an Alien Enemy cannot do.

Cannot take a Lease.

32 D. 8. r. 16. sect. 13.

Statute. See 1 *Syd.* 309. 3 *Mod.* 94.

Neither can an Alien Friend, who is not a Merchant.

But an Alien Friend may be an Administrator.

An

An Alien Enemy cannot  
be an Executor.

What Actions Aliens may  
have.

## Alien.

An Alien Enemy can have no  
Action as Executor, tho' it is in *Auter  
Droit. Cro. Eliz. 142.*

An Alien Friend may have Per-  
sonal Actions, but an Alien Enemy  
cannot have any Action whatsoever,  
*Co. Lit. 129. b.*

## Agree

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# Agreement,

Agreement, See { 1st Part 81.  
Discharge.

**A**greementum est aggregatio  
Mentium in re aliqua facta vel  
facienda, viz. An Union, Collection,  
Copulation and Conjunction of two or more Minds in any  
Thing done, or to be done. 1 Plow. 17. a. See more for  
Agreements Executed, and Executory, in Title Agreements, in  
Terms of the Law.

Agreement; what.

Every Agreement ought to be per-  
fect, full and compleat; for it is the  
mutual Consent of the Parties, and  
ought to be executed with a Recompence, or else to be so cer-  
tain as to give an Action or other Remedy for a Recompence.  
Plow. 5. a.

Agreement, how to be.

Where *Pro* amounts to a Condi-  
tional Agreement, and how to lay an  
Action upon mutual Promises. 2 Lev.  
3.

*Pro* is a Conditional  
Agreement.

The Plaintiff and Defendant may  
(by Agreement between them) give  
Money equally to the Jury to defray  
their Charges where the Tryal is put  
off, they by that Means being forced to stay longer in Town  
than they expected; so likewise they do where there is a View;  
and also give them a Treat at equal Charges.

Where the Plaintiff and  
Defendant may give Mo-  
ney to a Jury.

If the Plaintiff's Attorney and the  
Defendant's Attorney do agree to  
things in order to the Proceedings in  
their Clients Cause, which are not  
manifestly prejudicial; tho' the Cli-  
ents do afterwards refuse to consent to their Agreement, yet  
the Court will compel the Performance of it.

Agreement between the  
Attorneys, not manifestly  
prejudicial to their Clients,  
shall be performed.

No Agreement to bind Executors or Administrators upon any special Promise: Nor Marriage Agreements, or Sale of Land, &c. unless in Writing.

Person, or to charge any Person upon any Agreement made upon Consideration of Marriage, or upon Contract, or Sale of Lands, or Interest therein, or upon any Agreement not to be performed within a Year, unless the Agreement whereupon the Action shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party charged, or

Statute of Frauds and Perjuries.

29 Car. 2. cap. 3.

Contracts for 10 l. and upwards void, unless giving of Earnest, or a Note in Writing.

ring of the Bargain be made and signed by Parties, or their Agents lawfully authorized. *Ibid.*

No Action shall be brought to Charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate, or to Charge the Defendant upon any special Promise to answer the Debt, Default or Miscarriage of another Person, or to charge any Person upon any Agreement made upon Consideration of Marriage, or upon Contract, or Sale of Lands, or Interest therein, or upon any Agreement not to be performed within a Year, unless the Agreement whereupon the Action shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party charged, or some other Person to be by him authorized thereunto by the Statute of 29 Car. 2. ca. 3. of Frauds and Perjuries. See Title Assumpsit, and Executors.

No Contract for Sale of Goods for 10 l. or upwards, shall be good, except the Buyer accept of the Goods sold, or give something in Earnest, or some Note or Memorandum in Writing.

Assumpsit

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# Assets.

Assets, see Heir.  
Executor.

**A** Assets are of Two Sorts ;  
Assets Real, and Assets Per-  
sonal. Assets Real, are where a  
Man is seized of Lands in Fee-  
Simple, and dies seized; the Land  
which descends to his Heir, are Assets Real: And where  
he dies possessed of any Personal Estate, the Goods which  
come to the Hands of the Executor, are Assets Per-  
sonal.

Assets, *Quid.*

Assets Real and Per-  
sonal, what.

Lands which come to the Heir by  
Purchase, shall not be Assets; it's on-  
ly Land by Descent which shall be  
Assets.

What Lands shall be As-  
sets.

A Reversion depending upon an  
Estate Tail, is not Assets; because the  
Tenant in Tail may bar it when ever  
he pleases. 6 Rep. 58. b.

Reversion upon an E-  
state Tail, not Assets.

The Jury find Assets in Ireland, it  
is Surplusage; for if an Executor  
 hath Goods in any Part of the World,  
he shall be charged in Respect of  
them. 6 Rep. 47. b.

An Executor shall be  
charged with Assets in any  
Part of the World.

Assets are found to Part of the  
Debt, upon *plene Administravit*; yet  
the Judgment must be of the whole  
Debt, *de bonis Testatoris si tantum*, &c.

Assets to part of the  
Debt, upon *plene Admini-  
stravit*.

The common Judgment against an Executor, and upon  
producing of the *Postea*, the Sheriff will return upon the *Fieri  
facias de bonis Testatoris à Devastavit*, for so much as is found  
upon the Verdict. 8 Rep. 134.



**Assets.**

**Lands of Cestuyque Trust**  
shall be Assets by Descent.

his Heir, they shall be Assets by Descent. 29 Ca. 2. cap. 3.  
See Title Uses.

Against fraudulent Devises.

3 & 4 W. & M. cap. 14.  
6 & 7 W. 3. cap. 14.

**Lands of Cestuyque Trust** shall be as liable to Executions, as if he himself had been seized. So also if he dies and leaves Lands to descend to his Heir, they shall be Assets by Descent. 29 Ca. 2. cap. 3.

See the Statute of the 3 & 4 W. & M. cap. 14. For Relief of Creditors against Fraudulent Devises, made Perpetual by 6 & 7 W. 3. cap. 14. See also Title Heir.

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# Attaint.

**A**ttaint, is a Writ that lies where a false Verdict in a Court of Record, upon an Issue joined by the Parties, is given; and if the Jury are convicted, they are stained with Perjury, and become Infamous for ever: For the Judgment at the Common Law is,

What an Attaint is.

The Judgment in it.

1. Quod amittant liberam legem imperpetuum. 2. Quod forisfaciant bona & catalla sua. 3. Quod terre & tenementa sua in manus Dom' Regis capiantur. 4. Quod Uxores & liberi extra domus sua ejicerentur. 5. Quod Domus sue prostermentur. 6. Quod Arbores sue extirpentur. 7. Quod prata sua arentur. 8. Quod corpora sua carceri mancipentur. So odious is Perjury in the Eye of the Law. But now by a Statute made 23 H. 8. cap. 3. the Severity of the Common Law is mitigated, where a Petty Jury is attainted; and now there is a Pecuniary Penalty appointed thereby, and also Fine and Ransom at the Discretion of the Court. See Co. Litt. 294. b.

Altered by the Stat. of 23 H. 8. cap. 3.

Attaints must be sued in the Courts of King's-Bench or Common-Pleas, and what Processes are to be in Attaints. 23 H. 8. cap. 3. But a Nisi Prius may be granted.

Where Attaints must be sued.

23 H. 8. cap. 3.

Nisi Prius.

No Attaint lies upon an Inquest of Office. Fitzh. Attaint 13. 2 H. 4. 2. b.

Lies not upon an Inquest of Office.

Where the King is sole Party against the Subject, and the Jury find for the King, no Attaint lies. 4 Leon. 46. But it is otherwise where the Suit is *tam pro domino Rege quam pro seipso*. Ib. & Cro. El. 309.

Lies not when the Jury find for the King.

But it lies upon a *Qui tam*.

If the Record is not in the Court where the Attaint is brought, it must be removed into it before there can be

The Record must be in Court before any Proceedings.

any Proceedings, and how it is to be done. See *Cro. El.* 371, 372. 1 *Roll. Abr.* 394. A.

Where it lies not.

An Attaint lies not for that which was not given in Evidence. *Br. Attaint* 82.

How it must be where the Judge declares the Law erroneously.

If the Judge declares the Law to the Jury erroneously, and they find accordingly; though this may excuse them from the Forfeitures, yet however, upon the Attaint, the Judgment is to be reversed, for a Man shall not lose his Right by a Judge's Mistake of the Law. *Vaugh.* 145. *Br. Attaint* 82.

What Pleas the Petty-Jury may plead.

After the Plaintiff hath assigned the false Oath, the Petty-Jury shall have no Answer, but only that they made a True Oath; unless the Plaintiff hath been nonsuited, discontinued, or had Judgment against the Petty-Jury. *Keil.* 130. 4. See 23 *H. 8. cap.* 3.

What Evidence must be given upon it.

In an Attaint, more Evidence cannot be given than was given to the first Jury, for no Default was in the first Jury, if it was not shewn to them. *Dy.* 53. *Pl.* 14. But the Defendant may give more Evidence in Affirmance of the first Verdict; but the Plaintiff may answer it, and disprove it if he can, but he cannot give other Evidence. *Dy.* 212. *Pl.* 34.

If a Man recovers in an Attaint upon a Verdict in Action, in which he lost his Land, he shall have Restitution. *Br. Attaint* 84. So also in Case of Damages. See *Dam.* 601.

Attorn



# Attornment.

First Part 83.

Attornment, See

Herger.

Joint Tenant.

Tenant in Common.

**W**hat follows, is both the Law stood before the Statute of 4 & 5 Anne, for the Amendment of the Law; which see in the last Paragraph under this Title.

An Attornment of one Joint-Tenant for Life, shall vest the entire Reversion in the Grantee. 2 Rep. 66. b.

Attornment with Notice to Part, is a good Attornment for the Whole. 2 Rep. 67. b.

Attornment must be pleaded, but Livery nor. 8 Rep. 82. b.

Grant of a Reversion pleaded to an Avowry without Attornment: And a Verdict for the Avowant upon *Riens arere*, this cures the want of Attornment. 2 Lev. 234.

A Reversion in a Term is not assignable, without a Deed and Attornment. 2 Lev. 155.

To a Devise or Fine to Uses, there needs no Attornment. 2 Lev. 40. Co. Litt.

By the Attornment of a Term for Years, a Fine *sur Concessit* is executed, and the Estate as well vested as if by Livery. 2 Lev. 156.

How the Law stood as to Attornments, before the 4 & 5 Anne.

4 & 5 Anne.

Attornment of one Joint-Tenant, is good.

Attornment with Notice to Part, is good.

Must be pleaded.

Grant of a Reversion pleaded to an Avowry, *sans* Attornment, is good after Verdict.

Reversion in a Term not assignable, *sans* Deed and Attornment.

Needs no Attornment to a Devise or Fine to Uses.

Fine *sur Concessit* is executed by Attornment of a Term for Years.

Grants to be made by Fine, or otherwise, of any Manors, &c. or of Reversions or Remainders of them, shall be good, without Attornment of the Tenant.

4 & 5 Ann.

4 & 5 Ann., For Amendment of the Law.

Tenant upon whose Estate any such Reversion or Remainder shall and may be expectant or depending, as if Attornment had been had and made.

But Notice must be given of such Grant.

Rent to such Grantor, or Breach of any Condition for Non Payment of Rent.

By the Statute of 4 & 5 Ann., it is enacted, That all Grants and Conveyances to be made by Fine, or otherwise, of any Manors or Rents, or of the Reversions or Remainders of any Messuages or Lands, shall be good and effectual, without the Attornment of the Tenant of any such Manors; or of the Lands out of which such Rent shall be issuing; or of the particular

But Notice must be given of such Grant to the Tenant, before he shall be prejudiced by Payment of any

Rent to such Grantor, or Breach of any Condition for Non Payment of Rent.

Attorn

# Assumpfit.

First Part 84.

Accord.

Contract.

Frauds and Perjuries.

Request.

Assumpfit or Promise, See

**A**ssumpfit, is either a voluntary Promise made by a Man to pay or promise any Thing to another; or else where a Man sells Goods to another, the Law makes the Promise that he shall pay for them.

Assumpfit, *Quid.*

A Promise that is made upon a sufficient Consideration, will well maintain an Action: For the Consideration shall be intended to be the Cause by the Promise was made, and in every Consideration there must be a Quid pro quo.

A Promise without a good Consideration, will not maintain an Action.

Every Contract Executory, imports in it self an Assumpfit. 4 Rep.

Every Contract Executory, imports in it self a Promise.

A Quantum Meruit lies for the Use and Occupation of an House, where no Sum certain is reserved; why should not the Plaintiff have well such an Action for his Land, as for his House or Chamber, when he hath no Remedy by Distress or Debt. 2 Ja. 2. *Sam & Beldam, B. R. 1 Cro. 598. 3 Cro. 242, 786, 859. Vide Sea, and quere this Matter. See Danv. Abr. 28, 29, 30.*

Where a Quantum Meruit lies for the Use and Occupation of an House.

The Court seemed to be of Opinion that an Action lies, in Consideration that the Plaintiff would permit the Defendant to enjoy omnes Decimas, &c. for Seven Years, though it was urged that they would not pass but by Grant. But it was answered, That here no Interest passes, but only an Agreement for the

In consideration that the Plaintiff would permit the Defendant to enjoy omnes Decimas for 7 Years.



2 & 3 E. 6. cap. 13.

good Discharge, upon the Statute of 2 & 3 Ed. 6. cap. 13. Trin. 35 Ca. 2.

What is a good Consideration to ground an Assumpsit upon.

good Consideration to ground an Action upon for Breach of this Promise; altho' he, to whom the Indenture is surrendered, do take no Estate by this Surrender. For though he take no Estate by the Indenture, yet he may have some Benefit, by Reason of the Surrender; and he that surrender'd it, may be prejudiced, by the Surrender: And therefore it is Reason that the Party should be repaired by the Performance of the Promise made before the Surrender.

*Indebitatus*, and a *Quantum Meruit*, are two several Counts.

the *Indebitatus* or *Quantum Meruit*: And upon a Demurrer it was held to be naught, because the Two Counts are several, and it doth not appear to which of the Counts to apply. 5 W. & M. B. R.

Assumpsit and Trover will not lie in one Declaration.

No Averment of performing a Promise against a Promise.

One Promise may, before Breach, be pleaded in Discharge of another.

A Promise to do a Thing upon Request, the Action lies upon the Request.

Where the Request is not travers'd, it is admitted.

the Request, the Request is admitted, and the Issue is only on the Assumpsit.

Where Request is necessary, and where not.

the Enjoyment, and there an Assumpsit will lie; and such Agreement shall be a

An Assumpsit or Promise to do a Thing upon a Consideration, that he to whom he made the Promise shall surrender an Indenture to him, is a

Upon an *Indebitatus Assumpsit*, and a *Quantum Meruit*, the Defendant shall but 10 l. pleads *Non Assumpsit*, but doth not say, whether it is an

Assumpsit, and Trover will not lie in one Declaration. 3 Lev. 99. 2 Lev. 101. See Title Actions.

A Promise against a Promise, needs no Averment of Performance. 1 Lev. 20. 87. 2 Lev. 22.

One Promise may be pleaded in Discharge of another before Breach, but after Breach it cannot be pleaded, without a Release, in Writing. 2 Mod. 44.

A Promise to do a Thing particularly upon Request, the Action lies upon the Request. 1 Lev. 48.

Where the Promise is to pay upon Request, if the Defendant pleads *Non Assumpsit*, and doth not traverse the Request, the Request is admitted, and the Issue is only on the Assumpsit.

A Promise to deliver a Thing for a Day, he is bound to do it, without Request. 1 Lev. 284.

Where an Action is to arise upon Condition precedent, as in Consideration that you will give me 5 l. I will deliver you my Black Horse: I cannot here bring an Action for the Horse, and say, That I tender'd you the 5 l. and you refused to accept it: Because it is not the actual Payment and Receipt of the Money which gives the Action. *Yelv. 76.*

If one upon a good Consideration shall assume or promise to do a Thing, and there is no Time set for the doing thereof, he that promised to do it,

shall have a reasonable Time allowed him for the doing of it, and shall not have Liberty to do it at any Time, during his Life.

For the Party promising, receiving a present Benefit by the Consideration, it is not Reason that the other Party should expect so long for the Benefit he is to receive, by performing the Promise, as to his whole Life of the Party, tho' the Law will streighten no Man in his Time for doing of any Thing.

Where an Assumpsit or Promise is the Ground of the Action brought, it must be set forth precisely: where it is but the Inducement to the bringing of the Action, there

is not necessary to set forth the Promise so precisely in the Declaration. For the Ground of every Action which is brought, must be set forth in the Plaintiff's Declaration, that the Court may judge whether there be Cause of Action or no.

Every Contract made betwixt Parties, doth in Law imply a mutual Promise that they will perform the Contract, else the Contract would be to no Purpose, for want of a Remedy in Law to compel the Parties to perform it.

Heretofore the pleading of an Accord without Execution, was not sufficient: But now the Law being taken that Mutual Actions will lie upon such Agreements, such Accords shall be allowed. *Trin. 33 Ca. 2. B. R. Jones 158. Vide*

an Action upon a mutual Promise it is sufficient to say generally, that the Defendant hath not performed his Part, without assigning

Where an Action is to arise upon a Condition precedent.

Where there is a Promise to do a Thing, but no Time set for it.

Where the Assumpsit is the Ground of the Action: And when but Inducement.

Every Contract implies a mutual Promise.

Accord without Execution, is now good.

How to assign a Breach in a Promise.

of a Breach. 3 Lev.

A Discharge of the Promise before the Request.

without shewing how;

1 *Mod.* 262.

A Promise to pay if another did not, being made at the same Time, is not a Collateral Promise for the Debt of another.

Where Goods are bought without Money, the Bargain is void, unless a Day is given.

Trover for the Goods, and the other (after the Day for Payment is past) may bring his Assumpsit.

The Man to whose Benefit a Promise is made may have an Action, tho' not made to him.

there it also affords a Remedy to the Party to obtain it, 2 *Le.* 210, 211, 212. where a Promise was made to one, and the Action brought by another.

How an Action to be brought for Money won at Play.

the other promised to pay if he won, it will lie. *Mich.* 6. *E. M.* See *Danvers's Abr.* 28.

An *Indebitatus* lies for Money deposited upon a Wager.

Assumpsit lies upon a Policy of Assurance.

For Scutage.

*Pro Quodam Salario.*

## Assumpsit.

A Man promises to do a Thing upon Request, a Discharge of the Promise before the Request is a good Plea; but after Request made, it is not.

A Promise to pay if another did not, being made at the same Time when the Bargain was made, is not a Collateral Promise for the Debt of another; But all is one entire Contract upon the Sale. 3 *Lev.* 363, 364.

If a Man buy 20 Yards of Cloth at a Draper's Shop; the Bargain is void, unless he pay the Money presently. But if there be a Day of Payment given, here the one may bring Trover for the Goods, and the other (after the Day for Payment is past) may bring his Assumpsit.

He for whose Benefit a Promise is made, may have an Action for Breach of this Promise, although the Promise was not made to him. where the Law gives any Benefit to a Party.

A general *Indebitatus* will not lie for Money won at Play: But if it be laid specially, That is Consideration, that one promised to pay if he won, it will lie. *Mich.* 6.

Where Money was deposited upon a Wager, an *Indebitatus* for Money received to his Use well lies. *Show. Rep.* 117.

An *Indebitatus* lies upon a Policy of Assurance. 2 *Lev.* 153.

An *Indebitatus* lies for Scutage without an express Promise. 2 *Le.* 174.

*Indebitatus pro quodam Salario* held good. 2 *Lev.* 153.



The Consideration to stay Proceedings in a Suit of Law for ever, or for a certain Time, is a good Consideration to ground an Assumpsit upon.

Promise to stay Proceedings generally, & paululum Tempus.

If he promises to stay Paululum Tempus, it is held by some to be good: For where a Promise is to stay for ever, or for a certain Time, the Party to whom the Promise is made shall be intended to receive Benefit by the Forbearance, and the other Party may be prevented by forbearing to sue for ever, or for a certain Time: But to forbear Paululum Tempus, is uncertain and inconsiderable; for it may be but for a Minute, which can neither be profitable to the Party, nor a Damage to the other Party.

If one Part of the Consideration, upon which a Promise is made, is to do a Thing against the Law, and so void; yet if another Part of the Consideration be good and lawful, the Consideration which is good, is sufficient to ground an Assumpsit upon: For the Consideration may be divided, and if any Part of it be good, it is sufficient to make so much of the Promise good.

If part of the Consideration be void, and the other good, the Action will hold for the good.

An Assumpsit grounded upon a Consideration which was past before the Promise made, is a good Assumpsit.

Where an Action lies upon a Consideration executed and past.

If it be alledged to be made at the Instance or Request of the Defendant, or in Case it be for a Relation or Servant. For being performed at his Instance and Request, or for his Relation or Servant, it shall be intended to be for Benefit, and for which he is to make a Recompence to the other Party, and it is still a continuing Consideration.

An Action may be well brought upon a Reciprocal Promise by one Party against the other, although he who brings the Action hath not performed on his Side. Dy. 30, 75, 76.

Each may bring Actions upon Reciprocal Promises, although no Performance of either.

Where Super se Assumpsit was left out of a Declaration, and for that Reason Judgment stay'd after a Verdict. 1 Sid. 246. See 1 Keble 878. 1 Keble 77. Raym. 123. 1 Lev. 164.

Super se Assumpsit left out of a Declaration.

Where

A Recovery upon a Promise to pay 20*l.* per Ann. for 20 Years, 10 of the 20 are unpaid, and a Recovery for it. A *Sci. fa.* upon this Record lies for every Year due afterwards.

*Cro. Ca.* 241. says, That the Jury shall give Dammmages only for the Time past. But in *page* 250, Two Judges against One, they shall give the whole in Dammmages: *Because upon the Recovery the Promise is determined, and transit in rem Judicatum.* I conceive the Jury ought to give no more in Dammmages, than what was due at that Time of the Action brought, and after Verdict and Judgment enter'd upon such Action; the whole Matter appearing upon Record, the Plaintiff may, upon any other Default of Payment, sue out upon that Record a *Scire Fac.* against the Defendant, and set forth, That the Defendant has not paid the so many Years Arrears due since the last Recovery (as in the Case of an Annuity). And this was the Opinion

See Register of Writs,  
41. a, b.

Stat. of Frauds and Per-  
juries.  
29 *Ca.* 2. cap. 3.

No Action to be brought to charge any Executor or Administrator, on any Marriage Agreement, or Contract for Lands, or other Agreement not to be perform'd in a Year.

Unless the Agreement shall be in Writing, signed by the Party, or some Person authorized by him.

shall be in Writing, and signed by the Party to be charged therewith, or some other Person by him lawfully authorized  
Stat. 29 *Ca.* 2. cap. 3.

Where a Man promises upon good Consideration, to pay to 3. 20*l.* per Ann. at Michaelmas, for 20 Years. Now suppose 10 Years the 20 are elapsed, of which 10*l.* hath paid 5*l.* and there are five Payments in Arrear, and an Action brought for the five Years in Arrear.

of the Lord Chief Justice Saunders but *Quere.* See Title Annuities.

No Action shall be brought to charge an Executor or Administrator upon any Special Promise, to answer Dammmages out of his own Estate; to charge the Defendant upon a Special Promise to answer the Default, or Miscarriage of any other Person; or to charge any Person on any Agreement made upon a Consideration of Marriage; or any Contract or Sale of Lands; or any Interest in or concerning them; or an Agreement not to be performed within the Space of one Year from the Making: Unless the Agreement, upon which such Action shall be brought, or some Memorandum or Note there

After a Promise is broken, the Par-  
that made the Promise cannot  
discharged of it by Parol: But  
here the Promise is Executory he  
ay. For by the Breach, a Right of

Action accrues to the Party for the Wrong done unto him, which  
cannot be released by Parol. But before the Breach, no Injury is done,  
nor any Thing due to the Party by the Promise.

Where one becomes legally in-  
debted to another for Goods sold, or  
Goods delivered, the Law creates a

Promise, that he will pay this Debt: And if he do not pay it,  
there is a sufficient Ground for the Party to whom he is in-  
debted to bring his Action of *Indebitatus Assumpsit* against  
him to recover this Debt. For where the Law creates a Duty,  
it doth there give a Remedy to recover it.

Also if a Man delivers Money to B.  
my Use, I may have an Action a-  
gainst B. for this Money. *Danvers*  
26, 27.

If one receives my Rent upon  
tenure of Title, I may have an As-  
sumpsit against him; for where an  
account lies, an *Indebitatus* will lie. 2 *Mod.* 263.

It will lie for the Receipt of the  
Fees of an Office, though there be  
no Contract. 2 *Mod.* 260.

An *Indebitatus* lies for a Fine of  
land forfeited for the Breach of a By-  
law of a Corporation, for not serving  
the Steward. 2 *Lev.* 252.

Where there is a Note to pay  
Money lent on Demand, if there be  
an actual Demand made to pay the  
Money, from that Time Interest will  
accrue. 3 *Anna B. R.*

If the Day of an Assumpsit made  
in Figures in the Declaration, and  
in Words at Length, it is errone-

For the Time is Material, and Figures are not Words to ex-  
press any Thing, and Pleadings must be in Words, and in Latin, by  
Statute; which see in Title Pleas and Pleadings.

A Promise broken can-  
not be discharged by Pa-  
rol; but where it is Exe-  
cutory, it may.

Where the Law creates  
the Promise.

Assumpsit lies for Money  
received to my Use.

Assumpsit lies for recei-  
ving of my Rent.

It lies for the Receipt of  
the Profits of an Office.

Assumpsit lies for a Fine,  
upon the Breach of a By-  
Law.

Where Interest will be  
due upon a Note to pay  
upon Demand.

The Day in Figures in a  
Declaration, is naught.



An *Indebitatus* and *Quantum Meruit* may be laid several Ways, with a *Cumque etiam*.

**Tryal**, the Plaintiff may rest or rely upon that Way of laying

If any one Count is proved, it is good.

proved, it is sufficient for him to recover pro Tanto, every Promise being a several Count.

How the Proof must be, where it is for Goods sold.

sufficient for the Plaintiff to prove more Goods than one particular Thing sold; and also to prove a Price agreed upon, otherwise the Action will not lie. But where

Upon a *Quantum Meruit*, how to be.

but only the Delivery of the Goods, and the Value of them at the Time of the Delivery. Therefore it is most secure always in an Action for Goods sold, or Work done, to lay a *Quantum Meruit* with an *Indebitatus Assumpsit*; but if only one particular Commodity sold, there you must mention the Commodity so sold particularly in the Declaration; and not say, Goods sold.

Where an *Infirmul Computassent* lies, and where not.

Point, whether it lies for Rent only, and Judgments have been both Ways; which see in *Danv. Fol. 31. Pl. 11.* But I take it that where it is Part for Rent, and Part for other Things, it well lies. See *Stiles Rep. 131, 283, 473. 2 Lev. 110, 111.*

How the Plaintiff must lay his Declaration.

both Parties to be due, otherwise the Plaintiff will be Not suited.

Where one promises for another.

Not good without a Note in Writing.

In an Action brought upon a Promise, it is usual to lay the Action divers Ways, and by different Words, in the Declaration, with a *Cumque etiam*, to the Intent, that upon the best able to prove. For if any one of the Promises laid in the Declaration be

Where an *Indebitatus* is brought for divers Goods and Merchandizes sold and delivered, there it is requisite for the Plaintiff to prove more Goods than one particular Thing sold; and also to prove a Price agreed upon, otherwise the Action will not lie. But where a *Quantum Meruit* is laid, there he needs not to prove any Price agreed upon.

An *Infirmul Computassent* lies, not of Things certain, but only of Things uncertain. *Br. Tisle Account 81.* And therefore it hath been a controversy whether it lies for Rent only, and Judgments have been both Ways; which see in *Danv. Fol. 31. Pl. 11.* But I take it that where it is Part for Rent, and Part for other Things, it well lies. See *Stiles Rep. 131, 283, 473. 2 Lev. 110, 111.*

The Plaintiff must, in his Declaration, lay the very Day of the Account, and the very Sum agreed upon by both Parties to be due, otherwise the Plaintiff will be Not suited.

Two Persons go to an Innkeeper, one hires an Horse, and the other Promises that if the Innkeeper will deliver him to his Friend, he will see him forth coming. This as a Promise to make good the Default of another, is not good without a Note in Writing.

Yet the Defendant is chargeable here upon the Special Bailment, *Quod No-*  
ta, and so good without a Note.

3 *Anna B.R.*

Also upon a Contract for the Sale of Goods of the Price of 10 *l.* or upwards, no Action will lie, unless the Buyer accept part of the Goods sold, or give something in Earnest to bind the Bargain, or some Note or Memorandum in Writing be made and signed by the Parties to be charged with the said Contract, or their Agents thereto lawfully authorized. *Stat. 29 Ca. 2. cap. 3.*

In a Declaration upon a Collateral Assumpsit for another, it is not necessary to make Mention of any Note in Writing, but it is sufficient to produce it in Evidence.

If a Lord of a Mannor assesses a Fine upon a Copyholder for his Admission, and dies, his Executor, upon the Assumpsit in Law, may bring an Action for it; for it doth not depend upon the Inheritance, but is *quasi* a Fruit fallen. 3 *Lev. 261.*

If there be an Agreement to enter into a Bond for the Performance of a Thing of a certain Value, without naming of what Sum it shall be intended, according to the Value. 1 *Siderf. 270. Danv. Abr. 41.*

Where a Man promises to pay so much Money when such Businesses are done for the Defendant; if after part done the Defendant countermands it, the Plaintiff shall have an Action for the whole; and upon the Verdict the Jury ought to give as much in Damages, as the Business done deserves. *Danvers Abr. 67. See 3 Lev. 244.*

If A. promises to pay for all the Corn made at such a Furnace, *Secundum Ratam*, 40 *s.* per Tun, he must pay for odd Pounds proportionably. 133, 134. *Danvers Abr. 68.*

But chargeable upon the Special Bailment.

Upon a Sale of Goods of the Value of 10 *l.* or more, the Buyer must accept Part of the Goods, or pay Earnest.

29 *Ca. 2. cap. 3.*

Need not mention any Note in Writing in a Declaration upon a Collateral Promise, but must produce it in Evidence.

Assumpsit lies for an Executor for a Copyhold Fine for Admission.

A Promise to enter into a Bond, and says not into what Sum.

What Damages shall be given where the Defendant countermands the Promise, when but Part is done.

Where, upon a Promise to pay so much *per Tun* for all the Commodity, he must pay also proportionably for odd Pounds.

## Assumpsit.

*Indebitatus* for 20 l. not saying for what due, where not good, and where good.

An *Indebitatus* for 20 l. without saying for what due, is naught. 10 R. 77. 4. But in an *Assumpsit* the Plaintiff declares, That whereas the Defendant was indebted to him in 20 l. in Consideration that he had given him Time to such a Day to pay it, he promised to pay, &c. This is good, although not shewn for what the Defendant was indebted, for the Debt here was not in Question as if it had been an ordinary *Assumpsit*, where the Debt is the only Consideration of the Promise, for there it must appear to the Court, but here the Day given is the express Consideration, and though it be true that there must also be a Debt, yet this is allowed in the Promise, being actual, and also found by Implication in the Verdict. [Note, It ought to be proved at the Tryal.] Hob. 18. 5. See Cro. Jac. 397, 548, 584. What Reason had the Defendant to promise, if no Debt due?

Appeal

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# Appeal.

See First Part 85.

**A**pp<sup>ea</sup>l, is where one hath done a Robbery or Murder, or mayhem; then the Wife or Heir of him that is murdered, or the Party robbed or maimed, shall have an Appeal against the Parties and their Accessories, who have committed those Crimes.

Appeal, *Quid.*

An Infant may bring an Appeal.  
*More 461. Pl. 646.*

An Infant may have it.

A Woman cannot now bring an Appeal for the Death of any Body, but only her Husband: But if she marries before, for pending the Appeal, the Appeal is gone for ever. *Co. Litt. 25. b.* But an Appeal of Robbery she may. *2 Inst. 68.*

A Woman shall have it but only for an Husband.

None but the Heir at Law shall have an Appeal for the Death of his Ancestor; for tho' an Heir Female can have no Appeal her self, yet she shall prevent the Heir Male from having it. *Stamf. 59.*

Who shall have it.

In an Appeal of Burglary, it was *Burgaliter fregit* instead of *Burglariter fregit*; and therefore held naught. *Rep. 39. b.*

*Burgaliter* for *Burglariter*, is naught.

In an Appeal, the Count ought to be in *Propria Persona*, and not by Attorney. *3 Fa. 1. B. R.*

Count must be in *Propria Persona*.

Battel shall not be waged where the Defendant hath been indicted; and if the Defendant will offer it, it is a good Counterplea of Battel. *Armstrong's Case, 8 W. B. R.*

Where Battel shall not be waged.

## Appeal.

How the Count to be in an Appeal of Murder.

of which Blow the same Day he died at S. *Et sic* the Defendant killed him at W. and held repugnant, for it cannot be said that he murdered him where the Blow was given, but where he died. 4 Rep. 42. b.

Defendant found Guilty of Manslaughter, in an Appeal of Murder.

A good Plea to an Indictment of Murder.

How to plead safely in Abatement.

† Note, The Plea must be in *Propria Persona*, not *per Attornatum*. Showers Rep. 47.

Of Appeals by Writ or Bill & *Accusatio* by an Approver, and also of the several Manners of Attainders of Felony. 9 Rep. 119. a.

What is a good Plea in an Appeal of Murder.

where the Plaintiff for a Tort or Injury is to recover only Damages, he shall not be twice satisfied for one and the same Thing. 4 Rep. 43. a.

How it is in Case of an insufficient Indictment.

arraigned or appealed for the same Offence. 4 Rep. 47. a.

The Plaintiff ought to bring but one Writ against all the Parties concerned in the Murder.

all the Principals and Accessories before the Murder, and all the Principals and Accessories after the Murder, and before the Writ purchased, against whom the Plaintiff will bring the Appeal, to be named in one Writ, and not in several Writs. 4 Rep. 47. b.

In an Appeal of Murder, the Plaintiff counts that the Defendant gave the Deceased a Mortal Blow at W.

*Et sic* the Defendant killed him at W. and held repugnant, for it cannot be said that he murdered him where the Blow was given, but where he died. 4 Rep. 42. b.

In an Appeal of Murder upon Not Guilty, the Defendant was found guilty of Manslaughter, and had his Clergy: And was afterwards indicted of Murder, and pleads the Conviction in the Appeal, and held a good Bar. 4 Rep. 40. a.

If in an Appeal the Defendant pleads in Abatement of the Writ †, it is safe for him to plead also Not Guilty; for if the Writ be adjudged good, it is Peremptory, and he shall not be permitted to answer over, but shall be condemned upon the Writ. Showers Rep. 47.

A Recovery in an Action of Trepass and Assault, is a good Bar to an Appeal of Mayhem; for in all Cases

where the Plaintiff for a Tort or Injury is to recover only Damages, he shall not be twice satisfied for one and the same Thing. 4 Rep. 43. a.

Where an Indictment whereupon a Man is convicted is insufficient; yet the Party may be again indicted, and appealed for the same Offence. 4 Rep. 47. a.

A Woman brought Seven several Appeals for the Death of her Husband, against several Persons as Principals, and resolved that all the Appeals but one should abate: Because

all the Principals and Accessories before the Murder, and all the Principals and Accessories after the Murder, and before the Writ purchased, against whom the Plaintiff will bring the Appeal, to be named in one Writ, and not in several Writs. 4 Rep. 47. b.

Appeal against *A.* as Principal, and *B.* as Accessory before the Murder, and *D.* as Accessory after it ; the Principal is found guilty of Manslaughter, and had his Clergy, *B.* was discharged, because it was upon a sudden Debate or Affray : But if it be premeditated, it is Murder. Also, although the Principal was convicted by Verdict, yet because he had his Clergy before Judgment, so that it doth not appear judicially, viz. by Judgment of the Law that he was a Principal, both the Accessories, as well before as after, were discharg'd. *4 Rep. 43. See Title Indictment.*

Appeal against Principal and Accessories, the Principal is convicted of Manslaughter.

Malice premed.

In an Appeal, the Appellant ought to appear in Court in Person ; yet upon a Motion to the Court, the Court may admit him to prosecute his Suit by his Attorney. For there may be Reasons of his Absence ; But in Case of Appeal by a Widow de morte Viri, the Statute of

How an Appeal to be brought by a Widow, and how by an Heir.

3 Hen. 7. cap. 1. doth impower her to sue by Attorney : But when by an Heir,

it must be in *Propria Persona* (if of full Age) ; but if not, he must be admitted by the Court to sue per Custodem, or Guardianum : And then the Guardian must appear in Court. *Plaf. 12. W. B. R.*

Stat. 3 H. 7. cap. 1.

A Nonsuit in an Appeal after Appearance, is Conclusive ; but before an Appearance, it is not. *Hill. 7 W. Regis B. R.*

A Nonsuit after Appearance is Conclusive ; but before, not.

The Sheriff ought to deliver the Writ of Appeal into the Court at the Return thereof. And the Delivery of a Writ of Appeal by the Sheriff to an Infant, who was Plaintiff in the Appeal, and had before that Time chose a Guardian, was held to be a great Misdemeanor.

The Sheriff ought to deliver the Writ into Court : And the Delivery to an Infant Plaintiff, held a great Misdemeanor.

If one be indicted of Murder, and convicted of Manslaughter, and the Court will not call him to Judgment, but continue him over to another Gaol-Delivery, with a *Curia Advifare vult.* If an Appeal of Murder be brought,

One convicted of Murder or Manslaughter, and not called to Judgment, may plead this Conviction to an Appeal.

he may plead his Conviction, and his being a Clerk, ready to read, if the Court would have allowed him. *Kelyng's Rep. 107.*



Where the Court of King's Bench is bound to call the Party convicted to Judgment, and allow him his Clergy.

to be burnt in the Hand. *Kelyng's Rep.* 107.

Where the Appeal shall be tried before the Indictment.

How it shall be, if tried upon the Indictment before the Appeal.

3 H. 7. cap. 1.

the Appeal, and he be convicted of Manslaughter, and hath his Clergy, it is a good Bar to the Appeal. *Ibid.*

An Appeal brought the same Sessions, after Conviction of Manslaughter: The Court ought to allow him his Clergy, which he may plead in Bar to the Appeal.

the Appeal; and then he may plead the Conviction and Clergy, in Bar of the Appeal. *Kelyng's Rep.* 107, 108.

Where Clergy bars an Appeal of Murder.

and his reading as a Clerk; this bars the Appellant of his Appeal of Murder. *Kelyng's Rep.* 94.

For Robbery, either the Master or Servant may have it.

recover, and prevent the other of his Action. *Stamp.* 60. b.

May be by Bill.

All Principals and Accessories must be joined,

## Appeal.

When the Indictment and Conviction of Manslaughter and Appeal are removed into the King's Bench, that Court is bound to call the Party to Judgment, and to allow him his Clergy if he prays it, and order him

When at the same Affizes there is an Indictment and Appeal depending, the Appeal shall be proceeded upon, if desired, by the Prosecutor, because the Stat. of 3 H. 7. cap. 1. doth not forbid it; and if the Appellant be ready, he shall have the Preference. Yet if the Court try him upon the Indictment, before he be tried upon

Where upon an Indictment of Murder there is a Conviction of Manslaughter, and at the same Gaol-Delivery the Wife or Heir put in an Appeal, it is just for the Court to call the convicted Person to Judgment upon the Indictment, and to allow him his Clergy, before he be put to answer

Where a Person is convicted of Manslaughter upon an Indictment, and is allowed the Benefit of his Clergy,

If the Servant be robb'd of the Master's Goods, the Master or Servant may have the Appeal. *Hale's Pl. Coron.* 184. He that begins first, shall

An Appeal may be by Bill, as well as by Writ in Banco Regis, or Justices of Assize and Gaol-Delivery. *Stamf.* 64. b.

All Principals and Accessories before and after, must be joined in one Appeal. 4 Co. 47. b.

## Appeal.

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In an Appeal by Original, both Principals and Accessories are generally charged alike, without any Distinction of who are Principals, and who Accessories, until the Plaintiff counts upon his Writ. *Co. Litt. 127. a.*

How the Count in an Appeal of Death ought to be. See 6 *H. 1. cap. 9.* See *Danv. 493.*

If an Appeal be brought against several, and all but one make Default, yet the Plaintiff ought to count against all. 4 *R. 47. b.*

If an Appeal of Mayhem, the Defendant pleads in Abatement, and *quod* the Felony and Mayhem not Guilty. By this his Plea in Abatement is waived, for a Man shall not be allowed to plead in Abatement, and also Not Guilty, if not where Life is in Danger. *Cr. El. 493.* *Poph. 115. Om. 59, 60.*

How the Writ and Count must be against Principals and Accessories.

Count in Appeal of Death.  
6 *C. 1. cap. 9.*

Where several make Default.

Where to plead in Abatement, and not guilty also.

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H 4

Attene.

# Assent,

Assent, See { Executors.  
Corporation.

How the Assent of the  
Major Part of a Corpora-  
tion ought to be.

Where an Assent after  
the Act done shall give  
Force to it, *ab initio*.

seisin, made to the Use of J. S. makes him a Disseisor. *Dev.*  
R. 44.

And where not.

But where a Jointerefs within  
11 H. 7. suffers a Recovery without  
the Assent of him in Reversion, who  
afterwards releases to the Recoveror by Fine; this Assent comes  
too late, and shall never relate to the Recovery to make it good.  
*Dev. R. 48. b.*

**T**he Assent of the Major Part  
of a Corporation to an Act  
ought to be Simul & Semel, other-  
wise it is Assensus, not Consensus.  
*Dev. R. 48. a.*

Sometimes an Assent after an Act  
done, shall give Force to it, *ab initio*.  
As an Attornment to a grant of a Re-  
version; or an Agreement to a Dis-

Aun-



# Auncient Demeasne.

Auncient Demeasne, See { Abatement.  
Pleas.

**A**uncient Demeasne, are those Manors that were in the Hands of King Edward the Confessor, and which he caused to be writtten down in a Book called Doomsday, the Tenants of which Lands shall not be impleaded out of those Manors; and if they are, they may plead the Matter in Abatement: But if they answer to the Writ, and Judgment be given, then the Lands become Frank-fee for ever.

Auncient Demeasne, *Quid.*

Regularly all General Statutes extend to Auncient Demeasne. 4 Inst.

What Statutes extend to it.

Auncient Demeasne is a good Plea in Ejectment. 5 Rep. 105. a. In Real Actions, Actions of Account and Replevin, not in Actions merely Personal; as Debt upon a Lease, Trespass *quare Clausum fregit*, &c. Because they cannot hold Plea *Contra Pacem*; but if impleading the Freehold comes in Question, it's a good Plea. 46 E. 3. 1. Br. Aun. Demeasne 20. 4 Inst. 270. Hob. 47.

It is a good Plea in Ejectment, Replevin, &c.

Nor in Actions merely Personal.

Auncient Demeasne pleaded in Ejectment without *Venit & defendit* in *& Injuriam*, and good. Show. p. 386. It must not be after Imparlance.

Pleaded without Defence, and good.

Auncient Demeasne of such a Manor pleaded in Ejectment. The Plaintiff replies, That the Tenements are pleadable at the Common Law. *Quod hoc*, that they are *Parcel de Antiquo Dominio Domini Regis Anglie*; and upon a Demurrer, the Defendant

Auncient Demeasne pleaded.

Replication, and an ill Traverse.

had

bad Judgment: For that, the Traverse was Ill; for he ought to have travers'd that the Manor was *Ancient Demesne*, and that shall be tried by *Doomsday-Book*; or else to have travers'd,

How it ought to be  
tried.

To whom the Privilege extends to.

Buying and Selling; but the Privilege was annex'd to the Person in Respect of the Land, viz. Because they manure the Demeafnes, and provide Corn for the King's Garrisons; and the Privilege is for those Things which arise, or are to be used, in the Land, or for his Family that manures the Land. Cro. El. 221. 1 Leon. 231, 233. 2 Inst. 221.

**Who shall have it.**

Those Lands may be extended.

the Land is not directly put in Plea in the King's Courts. Hob. 4 Inst. 270. More 211. Pl. 351.

### Who may plead it.

it: *Because it is Frank-free in his Hands.* 41 E. 3. 22.

**Pleaded in Replevin.**

## What makes those Lands Frank-free.

13 C. So a Recovery in an Affize. 11 H. 4. 86. a, b. So where the Lands come to the King, this makes it Frank-free So also if the King leases it for Life, or grants it over in Fee 17 E. 3. 57. 21 Aff. Pl. 13.

**Who may reverse a Fine  
of it, and how.**

How it shall be where  
Part is *Antient Demerſne*,  
and Part at Common Law.

that those Tenements were held of  
that Manor. *Show. Rep. 271.*

The Privilege of *Ancient Demerit*  
to be discharged of Toll, doth not ex-  
tend to him that is a Merchant, or  
that trades and gets his Living by  
but the Privilege was annex'd to the  
Land, viz. Because they manure the  
Land for the King's Garrisons; and the Price  
which arise, or are to be used, in the  
that manures the Land. Cro. El. 27.

Tenant in Fee of Ancient Demeasne, shall have the Privilege of the Free Toll. 8. So also shall Tenant at Will. 2 Leon. 191.

Auncient Demeatne Lands may  
be extended upon a Statute-Merchant  
Staple, or *Elegit*: *Because the Title*

Leſſee for Years ſhall not plead *Ancient Demeaſne*; nor the Lord, in an Action againſt him, cannot plead

In Replevin, the Defendant may  
in Banco plead, that the *Locus in quo*  
*Auncient Demeasne.* 30 E. 3. 12. b.

A Fine levied in the King's Courts makes it Frank-free (until reversed by a Writ of Disceit). F. N. B.

Upon a Fine levied in the Common Pleas, the Lord (not being Party to the Record) cannot have a *Sci. fa.* but must bring a Writ of Disceit. 3 L. 419. But if the Fine be of Part Ancient Demerue, and Part at Common

now, it shall be annulled for the Auncient Demeasne, and stand the other. F. N. B. 98. P.

If a Fine be reversed by Writ of Scire facit, the Conuzor shall have it again, because the Fine was void, as in *Coram non Judice*. 4 Inst. 270.

What shall become of the Land upon Reversal of the Fine.

How to be prevented.

Co. 50. a. But if, after the Fine is reversed, the Conuzor had released to the Conuzee and his Heirs, or confirmed his Estate, he should have retained the Land, notwithstanding the Fine had been destroyed: *Because by the Release or Confirmation his Estate was made good*. F. N. B. 98 A. 10 Co. 50. a.

Age=



# Age-Praier, and Age

Age-Praier, and Age, See *1st Part 86.*  
*Infancy.*  
*Parol Demurrer*

Age-Praier, what.

**A**ge-Praier, is when an Infant is brought against an Infant for Lands which he had by Descent; there he shew the Matter to the Court, and pray *Quod loquatur remaneat*, until he comes to the Age of Twenty Years, and so by the Award of the Court the Suit shall stay: But in a Writ of Dower, and in an Assize, or a Purchase, he shall not have his Age.

How Age shall be tried upon a Fine or Recovery.

If the Question upon a Writ Error brought to Reverse a Fine, or Recovery for Nonage, be, Whether the Party be of full Age, or within Age, it shall be tried by the Court by Inspection of the Party during his Infancy, and not by a Jury: But there must be other concurrent Proof made to the Court, as well as by Viewing the Party, viz. by producing the Parish Register-Book where the Person was Christened, and also Affidavits of some Persons who can swear to the Time of the Birth: For the Court may be deceived, if they should rely only upon the View of the Party.

The Heir shall not have his Age, where the Recovery was against his Ancestor.

Debt is brought against B. upon a Bond, as Heir of A. B. pleads *tenens per Descent preter* a Reversion after the Death of C. the Plaintiff takes his Judgment for Assets, *quando acciderint*; then B. dies, and afterwards C. dies, and the Plaintiff setting forth all this Matter, brings his *Scire facias* upon the Judgment against the Heir and Tertenants of B. The Heir appears, and pleads, That he is *Infra Etatem*, viz. of the Age of 18 Years, and prays that the Parol may demur, *quousque*, &c. The Plaintiff demurs, and the Court

Praier that the Parol do demur.

Parol may demur, *quousque*, &c. The Plaintiff demurs, and the Court

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An Argument were of Opinion, That he should not have it, because Judgment was recovered against his Father, and the State was bound thereby, *quando acciderit*, and that this Pro-secution was only to have Execution of that Judgment. *Lee's case. 2 Anna B. R.*

The Heir at Law shall be allowed Nonage upon a Writ of Error, brought to Reverse a Common Recovery, suffered by his Ancestors, to the Use of himself and his Heirs; and the Parol shall demur, *quousque, &c.*

Where Nonage shall be allowed to an Heir at Law, and the Parol shall Demur, *quousque, &c.*

For the Law takes care to reserve the Estates of Infants, who cannot take Care of themselves.

Where a naked Right in Fee-simple descends, of which the Ancestor was once in Possession, there in an Action Ancestrel, brought by the Infant, the Parol shall demur without Plea; but the Parol shall

Where the Parol shall demur without Plea, and where not.

Demur without Plea where the Ancestor died seized.

*R. 3. b. 4. a.*

In all Actions brought by an Infant upon his own Possession, the Parol shall not demur. *6 R. 3. a. Cro.*

It shall not demur upon the Infant's own Possession.

*467.* Neither shall it demur in a Writ of dower, because the Widow may die before the Heir comes of Age.

Nor in a Writ of Dower.

*H. 5. 13.* Nor in a *Quare Impedit*, because a Lapse may be before he comes of Age. *3 Bulstr. 131.*

Nor in a *Quare Impedit.*

An Infant shall not have his Age in a Writ of Affize, because it is of his own Wrong, and there shall be no Delays in this Writ.

Nor in an Affize.

*E. 3. 27.*

Nor in a Writ of Partition. *6 R. 4. b. 242.*

Nor in a Writ of Partition.

In a Writ of Debt against an Heir shall have his Age, because at his

But he shall have it in Debt.

Age he may discharge himself by pleading of *Reins per Dis-*charge, or a Release of his Ancestor. *2 Inst. 89. Danvers Abr. 259.*

Where there is Baron and Feme, the Parol shall demur for the Nonage of the Feme, though the Baron

Where the Feme shall have it, not the Baron.

of full Age; but it shall not stay for the Nonage of the Baron. See *Dyer 137. Pl. 24. 18 E. 3. 33.*

If an Infant be in by Purchase or Agreement, he shall not have his Age.

An Infant Purchaser shall not have it.

*Affize*

# Affize and Affizes.

See First Part 87.

What a Writ of Affize  
is, and for what it lies.

13 E. 1.

23 D. 8. 6.

27 E. 3. cap. 9.

in a Wood yearly. Hob. 43. 9. Co. 112. b. It lies for  
of a Mill, not of Suit to a Mill that must be fed  
Molendinum. 8 Co. 46. b. It lies for Tenant by Elegit,  
13 E. 1. See 2 Inst. 395, 397. For Tenant by Statute  
Staple, Houses, Lands, Rents, Offices; and per 27 E.  
cap. 9. per Tenant by Recognizance; per 23 H. 8. cap.  
an Affize de libero Tenemento lies of other Things  
lie in Renter. 2 Inst. 411.

But Two Forms of Writs  
of Affize at the Common-  
Law.

In what Cases Writs of  
Affize lie.

Verdict and Judgment  
for Damages and Costs.

Defendant, with Damages and Costs. 8 Rep. 50. a.

No Essoign, Protection,  
Voucher, or Parol Demur.

vouch a Stranger, nor any Party to the Writ, unless he  
presently into the Warranty; also the Parol shall not demur  
for Nonage of the Plaintiff or Defendant. 8 Rep. 50.

**A** Writ of Affize, is Festum  
Remedium. Co. Litt. 153, 154.  
159. It lies not for a Nonfeasance  
Rol. Abr. 104. Pl. 1, 2. For  
Kent issuing out of Tythes bare  
Vaugh. 204. It lies for Estover

There are but Two Forms  
Writs of Affize at the Common Law  
viz. Affize de Libero Tenemento;  
Affize de Communia Pastura. 8 Rep.  
45. b. 46. a, b.

In all Cases where Writs of  
Affize lie, both at Common Law  
by Statute. See Webb's Case. 8 Rep.  
from Fo. 45 to 50. b.

A Verdict and Judgment in  
Writ of Affize, where Part was found  
for the Plaintiff, and Part for

In an Affize, the Defendant shall  
not Essoign, nor cast a Protection,  
pray in Aid of any but the King,



The King's Bench, or Court of Common Pleas, may hold Plea of Affizes of Land in the County of Middlesex, by Writ out of Chancery, and there must be 15 Days between the Teste

and the Return of a Writ of Affize: But in all other Counties, Writs of Affize must be returnable at the next Affizes, and may be sued out 15 Days before the Affizes, and they must be returnable at the next Affizes; and at least 8 of the Recognitors must have a View before the Affizes, and ordered to appear in Court the first Day of the Affizes.

An Affize is to be arraigned in French; and first the Plaintiff's Council doth pray the Court, That the

Defendant may be called, which the Court grants, and thereupon he is called by the Cryer of the Court; and if upon his being called, he does appear, then the Defendant's Council may, if they think fit, demand Oyer of the Writ of Affize, and the Return of it, which will be granted: And thereupon they may pray Leave of the Court to Imparle, which the Court will grant to short a Time after, and the Recognitors will be adjourned by the Court to appear at that Time. This is *Festinum medium*, and there is no such quick Dispatch in other Civil Actions. Note, In this Action, the Lands, Damgages, and Costs, are recovered.

Note, The Jurors that are to try the Affize, are called Recognitors of the Affize; and are (at least Eight of them) before the Return of the Writ have a View of the Thing in demand.

At the Day given by the Court to the Defendant to appear, and the Recognitors to appear again, the Defendant is called, and if he doth not

appear, the Recognitors are sworn to try the Writ of Affize; if he appears, and pleads to Issue, then they are sworn to try the Issue joined in the Writ of Affize: The Writ, and Count, and Issue, are in Latin; but the Plaintiff's Council may plead the Writ and Count in French, and then they proceed to their Evidence. Observe, That in these Actions the Jury view the Land in Question before the Evidence given: But in the Judgment, the Jury have the View after Evidence given; not then neither, but by Order of the Court, and Consent of

The King's Bench may, by Writ out of Chancery, hold Plea of Affizes for Land in Middlesex.

The Manner of Arraigning of an Affize.

Lands, Damgages and Costs, recovered.

The Jurors are called Recognitors, and must have a View.

Of the Defendant's Appearance and Pleading.

Difference between an Affize and an Ejectment.

Order of the Court, be a View before Tryal in Ejectment or Trespas, &c.

When Judgment is to be given.

stay it upon a Motion in Arrest of Judgment) and as soon as the Plaintiff hath his Judgment to recover his Seisin, and Damages and Costs signed by the Clerk of the Affizes, he may at the same Affizes, if he thinks fit, make out a Writ of Seisin, and also a *Capias ad Satisfaciendum*, *Fieri facias*, or an *Elegit*,

What Execution for Damages and Costs.

What the Plaintiff must prove.

How Seisin of an Office to be proved.

What is a sufficient Seisin.

There may be a Special Verdict in a Writ of Affize; if uncertain, how to be set right.

to come again to be examined, and make their Verdict more certain. 1 Plow. 92. a.

Tenant for Years pays the Rent, it is not sufficient Seisin to bring an Affize.

Tenant for Years. 6 Rep. 56 to 59. b.

The Proceedings in a Writ of Affize of Novel Disseisin.

of the Parties. But now by the Statute of 4 & 3 Anne, for the Amendment of the Law, there may, by Order

After the Tryal upon a Writ of Affize, the Court gives Judgment immediately; (unless they see Cause to stay it upon a Motion in Arrest of Judgment) and as soon as the Plaintiff hath his Judgment to recover his Seisin, and Damages and Costs signed by the Clerk of the Affizes, he may at the same Affizes, if he thinks fit, make out a Writ of Seisin, and also a *Capias ad Satisfaciendum*, *Fieri facias*, or an *Elegit*, (if the same shall be desired by the Plaintiff) for the Damages and Costs.

In an Affize, the Plaintiff must first prove his Title, then his Seisin and Disseisin.

An Affize of an Office was taken by Default, and afterwards tried; but the Defendant was not permitted to plead any Plea. 2 Lev. 120.

The taking of One Third of A. for a *Capias*, is a sufficient Seisin of the Office of a Filazer to bring an Affize upon. Dyer 114.

A Special Verdict was found in a Writ of Affize of fresh Force in London; but it not being full and perfect, the Plaintiff sued out a Certificate of the Affize, to make the Recognition

Payment of Rent by a Tenant for Years, is not a sufficient Seisin to maintain an Affize against the Tenant after the Years expired, by reason of the Imbecility of the Estate.

Of the Proceedings in a Writ of Affize of Novel Disseisin. See New and Scolasticas's Case. 2 Plow. 412.

For the Proceedings in an Assize of fresh Force in London. See Pannel and More. 1 Plow. 91. So also in another Assize of fresh Force there. 1 Plow. from 89 to 91. Pollard & Ux, & Fe-  
gel, where there is a Plea of Abate-  
ment, and Demurrer to it: And also  
Nul, Tort, Disseisin, found at Four  
several Times. *Ibidem*.

If Lessee for Years, or Tenant at  
Will be ousted, the Lessor or he in  
the Remainder may have an Assize,  
because the Freehold was in him at the  
Time of the Disseisin.  
Keyl. 109. b.

The Defendant may pray Oyer  
of the Writ and Count, and shall have  
2 Bulstr. 160. 3 Mod. 273.

If the Writ of Assize be *de libero  
arbitrio*, the Demandant may make  
his Plea both of Land and Estovers,  
though an Assize lies at the Common  
Law for Land, and by the Statute of  
Westminster, 2 Car. cap. 25. for Estov-  
ers. 8 Co. 47. b.

It is a common Learning, that in  
an Assize the Plaintiff need not to be so  
certain as in other Writs, because  
the Judgment is to recover *per Visum  
recognitorum*; and if the Plaintiff be  
so certain, as the Recognitors may put the Demandant in  
doubt, it is sufficient. *Dyer* 84. b.

In an Assize for an ancient Office,  
the Demandant in his Plea need not  
show what Fee or Profit is belonging  
to it; but in a newly erected Office  
he must. 8 R. 49. b.

In an Assize for a Rent-Charge or  
Rent, the Demandant must make a  
Title in his Plea, but not in an As-  
sise for Lands, for there Possession,  
without any other Title, is sufficient.  
56. b.

How a Bailiff may plead. *Keilw.*  
b. *Doctrina placitandi*, 48.

In an Assize of fresh  
Force.

Plea in Abatement, De-  
murrer, Nul, Tort, Ver-  
dict.

Four several Disquisitions  
found.

Lessor, or he in the Re-  
mainder may have it.

Time of the Disseisin.

Oyer of the Writ and  
Count.

The Demandant may  
make his Plea, both at  
Common Law, and by the  
Statute of *21. Car.*  
cap. 25.

The Plaintiff need not to  
be so certain, as in other  
Writs.

And why.

put the Demandant in

How the Plaintiff must be  
for an old Office, and how  
for a new Office.

The Demandant must  
make a Title in his Plea  
for Rent, not for Land.

*Jenk. R.* 42. *Dyer* 85. b.

How a Bailiff may plead.



# Audita Querela.

Audita Querela, See } 1st Part 90.  
Sci. facias.  
Contribution.  
Discharge.

*Audita Querela*, is an equitable Action, and may be brought by a Reversio-ner.

Man hath a Release, but hath no Day in Court to plead it.

How the Process to be in an *Audita Querela*.

son, there the Process upon an *Audita Querela* must be *Sci. facias*: But where it is not grounded upon a Deed, there the Process must be *Venire facias*, and after that a *Distringas*, and so *ad infinitum*, until the Defendant appears. *Hill. 5 W. & B. R.*

Where a *Sci. facias*, *ad Cognoscendum scriptum*, lies.

thereupon, but may bring his *Sci. facias* against the Defendant, *ad Cognoscendum scriptum*, and he shall have the same Benefit thereupon, as upon his *Audita Querela*. *Mich. 5 W. & B. R.*

When the Plaintiff may have a *Superfedeas*, and when not.

first come into Court, and brought his Witnesses there to prove his Deed; but if Execution be executed before Proof of the Deed, no *Superfedeas* shall be granted, unless Bail be put in the Allowance of the Court: Because Execution being executed it comes too late. *Mich. 8 W. R. B. R.*

**A**n *Audita Querela* is only an equitable Action, and may be brought by a Reversio-ner, of him that hath but interesse terminum March R. 71. Also it lies where

Where an *Audita Querela* is grounded upon a Deed under Hand and Seal, or where the Parry is in Prison

In all Cases where a Man hath a Deed to discharge himself by, he need not sue out his Writ of *Audita Querela*

Upon an *Audita Querela* brought upon a Release, or other Deed, there shall not be any *Superfedeas*, until the Plaintiff in the *Audita Querela* has

If one be taken in Execution, and is afterwards set at Liberty by the Plaintiff, and then is taken again, and detained in Prison upon the same Execution, he may bring his *Audita Querela* to be enlarged: For by the Enlargement of the Prisoner by the Plaintiff, the Execution is discharged; and an Execution once discharged, is for ever discharged, and cannot be revived, for the Discharge supposeth a Satisfaction.

It lies for one discharged out of Prison.

One, who was in Execution, brought his *Audita Querela*, and prayed, that he might be bailed; which was granted, and he was bailed by Four Persons, who entred into a Recognizance for that Purpose. For this Bailing of him is not a Discharge of the Execution, for by his Bail he is in Custody of the Law, and if he make not out his *Audita Querela*, he must render his Body in Execution again, or pay the Debt for which he was in Execution, or else the Bail must pay it.

One in Execution bailed upon an *Audita Querela*.

Where the Plaintiff in the Judgment releases the Defendant in the Judgment of all Judgments and Executions; the Defendant, upon this Release, may either bring his Writ of *Audita Querela*, or else he may out of the same Court where the Judgment is entred sue out a *Sciri facias* against the Plaintiff in the Judgment, *ad Cognoscendum scriptum suum Relaxationis*. Mich. 5 W. & M. & Hill. 5 W. & M.

Where *Audita Querela*, or *Sci. fa. ad Cognoscendum scriptum*.

Where the Conuzee of a Statute assigns over the Statute, and afterwards releases to the Conuzor. And the Assignee sues the Statute, the Conuzor may bring his *Audita Querela*; and the Assignee shall be left to take his Remedy against the Conuzee: For upon the Assignment no Interest in Law vested in the Assignee. Pas. 35 Car. B. R. Cro. Car. 214.

No Interest in Law vests in the Assignee of a Statute.

The Conuzor and his Heir may have an *Audita Querela* before Execution sued, but a Stranger or Purchaser shall not until he be ousted by Execution. 3 Rep. 13. b.

Conuzor and his Heir may have *Audita Querela* before Execution, but a Purchaser cannot.

Infancy in an *Audita Querela* must be tried by Inspection; and therefore must be brought during his Infancy, and then tried, for it cannot be afterwards; Co. 2 Inst. 673 And. 25. Dyer 232. Pl. 9.

How Infancy to be tried upon it.

Where the Defendant may have his *Audita Querela* upon a Release, and where not.

Where after Execution, and where not.

42. But in case of an Execution upon a Statute Merchant or Staple, an *Audita Querela* lies upon a Release before the Execution, because he had no Day in Court (as before) to plead it. 21 E. 3. 13. b.

Issue in Tail may enter, and is not put to his *Audita Querela*.

Statute, and is not put to his *Audita Querela*. Cro. Jac. 85. But he may bring it if he will.

It lies where the Sheriff delivers more in Value than a Moiety.

Lies not till Judgment entred.

dict, the Court will compel the Plaintiff to enter his Judgment according to the Verdict. 1 Mod. 111. 3 Keb. 291.

Lies where Execution is sued out before its Time.

the Condition; altho' the Condition be after broke, *Audita Querela* lies, because he hath extended the Land before his Time. 46 E. 3. 27. b.

It lies for the Bail after the Reversal of the Judgment against the Principal.

The Alienee of the Conuzor may have it.

of the Statute upon this Land, the Alienee may have his *Audita Querela*. 20 E. 3. 30.

If the Plaintiff releases the Judgment, and afterwards sues out a *Scire facias* upon it, and the Defendant is summoned and makes a Default, he shall never have an *Audita Querela*, nor the Benefit of his Releases. But upon 2 *Nichils* he shall. Hob. 283. See Raym. 19. 1 Sid. 54. 1 Lev. 45.

Tenant in Tail acknowledges a Statute and dies, the Conuzee sues out Execution against the Issue in Tail, he may have an Affize, and avoid the Statute, and is not put to his *Audita Querela*. Cro. Jac. 85. But he may bring it if he will.

Where upon an *Elegit* more in Value than a Moiety is delivered by the Sheriff, this is not void, nor a *Disseisin*, but the Party is put to his *Audita Querela*. Danv. 629.

It cannot be brought upon a Release until the Judgment be actually entred upon Record; and after a Verdict, the Court will compel the Plaintiff to enter his Judgment according to the Verdict. 1 Mod. 111. 3 Keb. 291.

Conuzee of a Statute sues out Execution before the Day given by the Defeazance, for the Performance of the Condition; altho' the Condition be after broke, *Audita Querela* lies, because he hath extended the Land before his Time. 46 E. 3. 27. b.

After Judgment against the Bail, the Judgment against the Principal is Revers'd, or the Money paid by the Principal. Rol. R. 383, 384. The Bail may have an *Audita Querela*. Cro. Jac. 645, 646.

If the Conuzee purchases Lands in Fee of the Conuzor, and then alienates it, and afterwards sues out Execution against the Land, the Alienee may have his *Audita Querela*. 20 E. 3. 30.



No Extent upon any Statute, Judgment, or Recognizance, shall be avoided or delayed, because part of the Lands extendible are omitted, saving to the Party whose Lands are extended; his Remedy for Contribution. *Note*, No Statutes unless De-

feazanc'd for Payment of Money only, nor Extents unless within Twenty Years after Judgment had, are within this Act.

16 & 17 Car. 2. cap. 5. made Perpetual, 22 & 23 Car. 2. cap. 2.

Tenants in Common shall join in an *Audita Querela*. *More* 664. Also one Joint-Tenant may have it without his Companion. *March R.* 71.

If a Man be Nonsuited in an *Audita Querela*, he may bring a new Writ, 22 E. 3. 4. b. But he shall not have a *Superfedeas*. *F. N. B.* 104. O.

Statute, Judgment, Part extended, Contribution, Statutes for Payment of Money, Extent upon Judgment, when.

16 & 17 Car. 2. cap. 5.

22 & 23 Car. 2. cap. 2.

Tenants in Common.

Joint-Tenant.

A new Writ lies after a Nonsuit, but not a *Superfedeas*.

**Appendant, See Appurtenant.**

**Autho=**

# Authority.

First Part 92.

Power.

Authority, See

Attorney.

Corporation.

Entry.

Authority, *Quid.*

**A**uthority, is a Power which one Man or more gives to another Man or more for the doing of some Act.

Where a Verbal Authority is sufficient to deliver an Ejectment Lease.

Lease be only signed and sealed by them off from the Land (lett in the Lease) but not delivered; yet it is a good Authority to deliver the Lease, so held in a Tryal at the Bar: For *nothing passes from those that deliver the Lease by Virtue of such Delivery; but from them that made the Lease, and their Authority by Word for another to deliver it, is as if they had themselves delivered it.*

If I agree to a Stranger's Entry for me, it is good.

to my Benefit, as if he had entred by my Order.

He that doth less than his Authority, it is void:

He that doth more, it is good for what he could do.

If a Stranger enters for me without my Authority; yet if I agree to it afterwards, it shall enure as much as if he had entred by my Order.

Where a Man doth less than his Authority, it is void; when he doth more, it is good, for so much as he had Authority to do, and void for the rest, 2 Lev. 61. See Co. Lit. 258. a.

whether

Where a Deed in Execution of an Authority is signed and sealed, it ought to be sealed and subscribed with the Name of the Master who gave the Authority. 3 Lev. 139, 140.

A Special Authority must be pursued, or else the Party will be a Trespasser. Lutw. 1480.

A Man cannot make an Authority, Power, or Warrant, irrevocable, which by Law in its Nature revocable. Rep. 82. a.

What may be done by Letter of Attorney, and what not; and the Difference between a Nude Authority, and an Authority coupled with an Interest. 9 Rep. 76, 77. See Tit. Power, Attorney.

When a Man makes a Letter of Attorney to deliver a Writing, purporting a Lease upon the Land, after the signing and sealing of it, he must in the Letter of Attorney recite that such a Writing, purporting a Lease of such Land, &c. (not to say an Indenture of Deed) was by him signed and sealed, and so to Authorize him to deliver it upon the Land. Danv. 665.

Where a Feoffment bears Date Sept. 10. and there is a Warrant of Attorney to deliver Seisin upon a Feoffment dated Sept. 11. this is void; for the Warrant was to deliver Seisin 11. Sept. *Secundum formam chartae*, when there was no such Feoffment. See Lit. Rep. 144, 145.

If a Letter of Attorney be made to Three, *Conjunctim & Divisim*, to make Livery; and Two make it, the Third being absent, it is naught. 5 Co. 91. See Co. Lit. 181. b.

A Feme Covert without her Husband may execute an Authority. 4 Ch. 9, 10, 39. &c.

How Deeds executed by Authorities must be executed.

Authorities must be pursued.

A Man cannot make an Authority irrevocable.

What may be done by Letter of Attorney, and what not.

Nude Authorities and Interests.

How an Attorney must deliver a Lease upon the Land.

Livery given, by a Letter of Attorney of a mistaken Date, is void.

How to be made when it is to Three, *Conjunctim & Divisim*.

A Feme Covert may execute an Authority.



Diversity between naked Trusts or Authorities, and Authorities joined to an Estate:

Also Authorities created by the Parly for private Causes, and created by Law.

devises that his two Executors shall sell his Lands, if one of them die, the Survivor shall not sell; but if he had devised his Lands to his Executors to be sold, the Survivor shall sell, because as the Estate, so the Trust, shall survive. *Co. Lit.* 181. and 113. 4. But when one Executor refused to sell, the other

21 H. 8. ca. 4.

refuse, but makes no Provision where some Executors die for the Survivors to sell.

The Act must be done in the Name of him who gave the Authority.

## Authority.

There are Diversities between naked Trusts or Authorities, or a Trust or Authority joined to an Estate or Interest: Also there is a Diversity between an Authority created by the Parly for private Causes, and an Authority created by Law for Execution of Justice. As for Example; A Man

could not, until the 21 H. 8. cap. 4. which makes Provision for others to sell, where some of the Executors refused to sell.

Where a Man hath an Authority to do an Act, he must do it in the Name of him who gave the Authority. 9 R. 76. b.

Appur

# Appurtenant and Appendant,

First Part 93.  
 Appurtenant and Common.  
 Appendant, See Apportionment.  
 Unity of Possession.

The Difference between Appendant and Appurtenant, and Lord Pertinens, used indifferently for both. Co. Lit. 121. b.

Things Appendant are ever by Prescription, but Things Appurtenant may in some Cases be created at this Day: as if one grant Condition of Estovers to be burnt in his Manor, these are Appurtenant to the Manor. Co. Lit. 121. b.

Where Men have Mills or Houses, which Water-courses and Estovers are Appendant or Appurtenant, and they are blown down or burnt, &c.

Act of God: If the Owner re-edifie them in the same place and Manner as before, they shall have the ancient Appendants and Appurtenances. 4 Rep. 86. a. b.

Land cannot, as to the Right of the Words *cum Pertinentiis*, be Appurtenant to the House; but the Word *pertinent* shall be taken in the Sense of usually letten or occupied with the House, or lying to the House. Hill and Grange, Plow. 170.

The Commencement of Common Appendant was thus: When a Lord bestowed another with Arable Land,

Where the ancient Appendants and Appurtenances shall continue,

Land is not properly Appurtenant to an House.

The Commencement of Common Appendant.

to hold of him in Socage, the Feoffee *ad manutenendum* Socage shall have Common in the Lords Wastes for his necessary Beasts that Manure his Land, which Common Appendant is of common Right, and commences by Operation of Law in favour of Tillage, and need not to be prescribed for, and is only for Horses and Oxen who plow the Land, and Cows and Sheep who feed the Land. 4 Rep. 37. a.

Common Appurtenant, what.

mind ; this is Common Appurtenant, and not Common Appendant. 4 Rep. 27. a. b.

Common Appendant may be apportioned.

chase part of the Land, in which, &c. yet the Common shall be apportioned, and in what manner. See 4 Rep. 37, 38.

Common Appurtenant cannot.

in which, &c. the whole Common becomes extinct. 4 Rep. 37.

Where Unity extinguisheth Common Appendant.

Of what Things there may be an Appendency.

may be Appendant to a Corporeal Thing. Pl. Com. 170. Co. Lit. 121. b.

There must be an Agreement in Nature and Quality.

ment in Nature and Quality. Co. Lit. 121. b.

A Seat in a Church belongs to an House, not to Land.

of the Inhabitancy. Co. Lit. 121. b. 122. a.

But if an House, Meadow and Pasture, as well as Arable Land, have had Common, Time out of

Common Appendant may be apportioned, because it is of common Right ; and if the Commoner pur-

But in case of Common Appurtenant, which is against Common Right by Purchase of any part of the Land,

Unity of Possession of the interest in Land to which, and of the entire Land in which, &c. extinguishes Common Appendant.

One Corporeal Thing cannot be Appendant to another Corporeal Thing ; but one Incorporeal Thing

Common of Turbary or Estovers cannot be Appendant or Appurtenant to Land, but to an House to be specified there ; for there must be an Agreement

A Seat in a Church cannot be claimed by Prescription, as Appendant to Land, but to an House ; for the Seat belongs to the House in respect

Assignment of Bail-Bonds :  
See Title Bail, and Bail-Bonds.

Appo



# Apportionment.

Apportionment, See { Common.  
Appurtenant.

Apportionment, is a dividing into Parts a Rent or Thing which is dividable, and not entire and whole, and for that the Thing out of which the Rent, &c. was to be paid, is separated and divided, the Rent, &c. shall be divided, having respect to the parts.

Apportionment, *Quid.*

Apportionment shall be of a Rent Charge, or Rent Seck, for this is not within the Statute of *Westminster*, 3 *Car.* 2. which gives an Apportionment. See 2 *Inst.* 503. When a Rent, reserved upon a Lease for Years, is to be apportioned; if in an Action of Debt for it the Lessor demands more than he ought, upon *Nil debet* pleaded, the Lessor shall recover only so much as shall be apportioned and assessed by the Jury, and be barred for the Residue.

Shall not be of Rent Charge, or Rent Seck.

*Westm.* 3 *Car.* 2.

How Rent to be apportioned.

Common Appurtenant for Cattel Levant and Couchant shall be apportioned.

When both Common Appurtenant (by Grant or Prescription, *Westm.* 3 *Car.* 2. 504.) in Forty Acres, to Ten Acres of Land, for all his Cattel Levant and Couchant, and sold Part Ten Acres, the Common shall be apportioned, and each shall have Common for the Cattel Levant and Couchant on his Part. *Hob.* 237. 8 *Rep.* 78. *b.* But if he buys part of the 40 Acres, it is lost. See *Hob.* 25. and 235. *Co. Lit.* 122. *a.* 8 *R.* 79. But it is otherwise in case of Common Appendant, because it is of Common Right. *Co. Lit.* 122. *a.*

The Alienee shall hold  
*pro Particula.*

*Westm. 3 Car. 2.*

*Westminster, 3 Car. 2. 2 Inst. 503.*

Apportionment upon a  
Lease of Freehold and Co-  
pyhold together.

Freehold to another, and the Lessee attorns, the Rent shall be  
apportioned, for this waits upon the Reversion. *Cro. El. 605, 622.*

Where part of the Re-  
version is granted.

one Acre, the Rent shall be apportioned. *Co. Lit. 144. 879. b.*

Where part of the Rent  
is releas'd.

but it shall be apportioned; because the Grantee dealeth on-  
with the Rent, and not with the Land. *Co. Lit. 148.*

So upon an Eviction,  
or a Recovery by *Eigne*  
Title.

Years is evicted, or a Stranger recovers by an *Eigne* Ti-  
*Dy. 56. Pl. 14.*

Where it shall be in the  
Case of a stinted Common.

*viz.* When the Land is sown, to have Common after the ser-  
vice of the Corn; and when not sown, to have Common  
the Year; and he leases for Years one of the Yard-Lands,  
Lessee shall have Common *pro Rata.* *13 Co. 66. 2 Browl. 298. 1 Ventr. 385, 386.*

It shall be in Case of a  
Rent, where the Moiety of  
a Reversion is extended.

Rent, and it shall be apportioned. *Hill. 10 Jac. Camb.*  
Case.

If there be Lord and Tenant  
20 Acres by Fealty, and 10 s. Rent  
and the Tenant aliens two Acres in  
Fee, the Alienee shall hold the two  
Acres *pro Particula* by the Statute of

A Man leases Freehold and Copy-  
hold (with the Lord's Licence) for  
Years, reserving a Rent, and after-  
wards grants the Reversion of the

A Man leases three Acres for  
Life or Years, rendering of Rent, and  
afterwards grants the Reversion of

If a Grantee of a Rent releases  
part of the Rent to the Grantor,  
this doth not extinguish the Reversion

If the Lessor enters for a Forfeiture  
into Part of the Land, the Rent  
shall be apportioned. *Co. Lit. 148.*

likewise where Lessee for Life or  
Years is evicted, or a Stranger recovers by an *Eigne* Title

A Man prescribes to have Com-  
mon for two Yard-Lands for four  
Beasts, four Horses, and sixty Sheep

A Man leases for Years reserving  
a Rent, and afterwards one Moiety  
of the Reversion is extended upon  
Elegit, he shall have a Moiety of the

## Apportionment.

125

An Apportionment cannot be made upon a Demurrer, but it must be done by a Jury. *Dan. 509. Letter E.*

If to an Avowry for 40 l. Rent, the Plaintiff pleads an Eviction of Part, he ought to shew how much of the Land in Value was evicted, and how much remains. *Cro. Jac. 160.*

It must be by a Jury, not upon a Demurrer.

Upon an Eviction, how the Particulars of the Land must be set out.

## Account.



# Account.

Account, See { 1st Part 94.  
Auditors.

Account, *Quid.*

**A**ccount, is a Writ which lies where a Bailiff or a Receiver, or other Person, who ought to render an Account, refuses to give his Account.

Account lies not of a Thing certain.

have an Account of the 10<sup>l.</sup> but of the Profits, for these are uncertain. *Bro. Account 25. Brownl 76. See Danvers Abr. 216, &c.*

Account must be before Auditors.

the Money into Court, that will signify nothing. For that in Tryal upon an Action of Account, the Jury have nothing to do, unless an Account stated be proved, but an Account must be before Auditors, for they are the Judges, and not the Jury. *Pal. 9. B. R.*

Where a Count in Account is ill on a Demurrer, but cured by Verdict.

Account lies against Executors and Administrators of Guardians, Bailiffs and Receivers, by

Stat 4 & 5 Annæ.

Also against one Joint-Tenant, and Tenant in Common, his Executors and Administrators against the other.

An Account lies not of a Thing certain, as if a Man delivers to Merchandize with, he shall

Where an Account Rendered, brought, if the Defendant will *Plene computavit*, and offer to bring

In a Declaration in an Action of Account, as Receiver, and says by whose Hands, is naught upon Demurrer; but cured by a Judgment, *Quod Computet.* 2 Lev. 126.

By the Statute of 4 & 5 Annæ. It is enacted, That Actions of Account may be brought against the Executors and Administrators of every Guardian, Bailiff and Receiver; and also by one Joint-Tenant, and Tenant in Common, his Executors and Administrators against the other, as Bailiff and Receiver, if he receives more

than comes to his just Share and Proportion; and also against the Executors and Administrators of such Joint-Tenant or Tenant in Common. And the Auditors

Auditors to Administer an Oath.

appointed by the Court, where such Action shall be depending, are empowered to Administer an Oath, and Examine the Parties touching the Matters in Question: And for their Pains and Trouble in Auditing and Taking of such Accounts, they shall have such Allowances as the Court shall think fit to be paid by the Party, on whose Side the Balance of the Account shall appear to be.

And be allowed for their Trouble.

Statute of Limitations doth not extend to Merchants Accounts.

21 Jac. cap. 16.

The Statute of Limitations of Actions, 21 Jac. cap. 16. doth not Bar the Plaintiff, who is a Merchant, from bringing an Action of Account Render for Merchandize at any time;

of Actions for Accounts for Merchandize being excepted out

of the Statute. But where a Merchant brings an Action on an *Indebitatus Assumpsit*, or *Infinimul Computasset*, for Moneys due in the way of Merchandize on an Account stated: Such

But where they bring *Indebitatus*, or *Infinimul Computasset*, they are within the Statute.

Actions are not within the Exception of the Statute, which extends only to Accounts Current. And the Reason thereof was, because it often happens, that Merchants who hold Correspondence one with another in several Parts of the World, may have Accounts current between them for many Years before they have an Opportunity of conferring together, in order to State their Accounts. Said. 124, 125. 1 Vent. 89, 90. Mod. 70. 276. 2 Mod. 311. 1 Sid.

All other Actions of Account Render within the Statute.

21 Jac. cap. 16.

5. And all other Actions of Account Render, and *Infinimul Computasset*, are within the Statute of 21 Jac. cap. 16.

Where the Condition of a Bond is to give a true Account upon Request, and the Party who is to give the Account, makes up his Account,

How to assign a Breach for Non-payment upon an Account.

and makes a right Charge upon himself, but puts more in his Charge than he ought; the Plaintiff cannot assign the Non-payment of the Charge as a Breach: Because, until the Account is agreed upon on both Sides, it is no Account. But the Breach must be assigned on the not giving of a true Account, and then all the Matters will follow in Evidence.

Parishioners

Parishioners cannot bring it against their Church-Wardens, but the next Church-Wardens may.

Parishioners cannot bring an Action of Account against their Church-Wardens, but they may make other Church-Wardens, and they shall have it against their Predecessors. *Br. Acc.*

*count 71.*

Account lies against the Receiver, not his Deputy.

If my Bailiff or Receiver makes a Deputy, I shall have an Account against my Bailiff or Receiver, not against his Deputy. *Fitz. N. B. 119. b. 4. Leon. 32.*

A Bailiff shall be allowed his Charges, but a Receiver not.

In an Action of Account against one as Bailiff, he shall have Allowance of his Costs and Expences, which shall not be allowed to one sued as Receiver. *Co. Lit. 172.*

It lies against one who receives my Rents.

A Man receives the Rent due to me from my Lessee for Life, or my Tenants, an Account lies against him.

as Receiver. *11 R. 2. Account 49. 6 R. 2. Account 47.*

How the Writ and Count to be against a Receiver, and how against a Bailiff.

The Writ shall be General, *tempore quo fuit Receptor Denariorum* without saying by whose Hands, but that must be shewn in the Court. *Co. Lit.*

*Litt. 126. a.* But it is not so if against a Bailiff. *Co. Lit. 172. a.*

How to plead in an Account.

*Re Unques Ballivus, or Nunguis fuit Receptor Denariorum*, are good Pleas. *21 E. 3. 60. Keilw. 114. 4. b.*

In an Account for 20 Pigs of Lead, the Defendant pleads Never his Receiver thereof, but says, Not for any Part thereof this is naught; but if he says, Never his Receiver, it is well enough. *2 Mod. 145. Rast. 18. a.*



# Auditor.

Auditor, See { 1st Part 97.  
Accounts.

**Auditors, are Persons appointed by the Court to Audit and settle the Accounts in Actions of Account Render, and other Cases.**

Auditors, what.

**Auditors assigned by the Court to receive and audit the Accounts upon an Action of Account brought, are the proper Judges of the Cause, viz. Whether the Party accountable be in Arrear or not; but the Plaintiff may traverse the Defendant's Account, if he thinks**

Auditors, Judges of the Account, but the Account is traversable.

**Where the Matter of the Plea confesseth the Defendant accountable, cannot be pleaded in Bar, for they are Judges of the Action, not of the Account; but the Auditors are Judges of the Account. Br. Account 48.**

The Court judges of the Action.

The Auditors of the Account.

**It is no Plea in an Account that he was robb'd; but before Auditors it is a good Plea, saying, That it was without his Default or Negligence.**

Where Robbery is a good Plea, and where not.

Co. Litt. 89.

**It is a good Discharge before Auditors, for a Receiver to tender the Money which he received, and to take Oath that he could not find**

Where the Defendant shall discharge himself upon his Oath.

**any Thing to buy which he might gain by; and thereupon he shall be discharged of the Profit which should have been made.**

Rel. Abr. 124. Pl. 4.

**Where a Factor hath a bare Authority to sell, he hath no Power to**

What a Factor is to do.

**take a Day of Payment, nay though they were Bona Peritura; but**

but he must receive the Money immediately upon the Sale,  
2 Mod. 100.

The Defendant pleads a Sale for 40/ and says not that he took Bond, or how the Plaintiff might come by it, it's naught.

In an Account *ex quo fuit Recep-*  
tor of a Jewel *ad Mercandizand*, the  
Defendant before Auditors pleads that  
he sold it to B. for 40 l. This is no  
good Plea; for it is not shewn how  
the Plaintiff shall come by his Money,

viz. that he took Bond, or other Security. *Yelv. 202.*

# Aid, and Aid-Praier.

## See First Part 98.

**W**hen Tenant for Life, Tenant in Dower, or by the Courtesy, &c. is impleaded; then for that they have or ly in Estate for Life, they shall pray in Aid of him in the Reversion.

Aid-Praier, *Quid.*

The Reason of granting Aid where the King's Tenant is sued in a *Clauum fregit*; is, because there may be Prejudice come to the King, and by common Intendment the Freehold is the Cause of the Action; but the King's Grantee in Fee shall not have it, neither doth it lie in any Action where the Freehold cannot be intended to be the Cause of the Action. *Danu. lib. 269.*

The Reason of granting Aid in the Case of the King.  
In what Actions to be granted.

Upon a general Allegation that a stranger was seized in Fee, and Leased to him for Life or Years, he shall not have an Aid-Praier. Because it would be in vain to grant it, when the Lessee may plead *hors de son Fee*, as well as his Lessor. But upon Special Matter disclosed, he shall have it of his Lessor who is Veray Tenant. *9 Rep. 21.*

Where upon a general Allegation for Lessee for Life.

Where *hors de son Fee* pleadable.

A Reversioner may come in by Aid-Praier, or else may come in Voluntarily, and pray to be received. *ibid. 865. a.*

A Reversioner may pray to be received.

See the Law upon Aid-Praier in Formedon. *ibid. 860, to 865.*

Aid-Praier in a Formedon.

The Court refused to grant an Aid-Praier for the King's Tenant in Ejectment, because he may have a *Inconsulto* at any time before Verdict, without an Aid-Praier. *Mich. 33 Car. 2.*

Not for the King's Tenant in Ejectment.



Where the King's Farmer shall not have it.

A sufficient Cause for Aid must appear in a *Rege Inconsulto*.

Where Tryable.

or to be denied, but in *Chancery*, from whence the Writ comes. *1 Rol. Rep. 208, 209, 289. 1 Rol. Abr. 159.*

Where Aid shall not be granted where the Title is void.

The King's Tenant at Will, and Copyhold Tenant, shall have it.

None but Privies shall have it.

The several Ways of Praying, and having Aid.

How the Award is upon Aid-Praier; or a Writ de *Rege Inconsulto*.

How the Defendant ought to remove the Record into *Chancery*.

The Plea is not put *sine Die*.

It lies in Ejectment.

Where in Trespass.

For a Bailiff.

For a Tenant at Will.

For Lessee for Life.

For Tenant by Courtesy.

For Tenant in Dower.

If the King's Farmer be sued upon his own Grant, made by him after the Grant of the King, he shall not have Aid. *1 Rol. Abr. 165. Pl. 1.*

In a *Rege Inconsulto*, a sufficient Cause of Aid must appear in the Writ, else it shall not be allowed. *2 Inst. 269.* But if the Writ contains a sufficient Cause, this is not traversable.

Where the Letters Patents, or other Cause of Aid-Praier, are void, Aid shall not be granted. *2 Inst. 269. 1 Rol. Abr. 155. Pl. 10. in Margine.*

The King's Tenant at Will shall have Aid of the King. *4 H. 6. 11.* Also the King's Copyhold Tenant shall have it. *1 Rol. Abr. 158. Pl. 2.*

No Person shall pray in Aid of the King, who is not privy to the King's Grant. *Danv. Abr. 278. (K.)*

For the several Ways of Praying, and having Aid. See *1 Rol. Rep. 208, 293. More 844.*

Upon the Aid-Praier, or a Writ de *Rege Inconsulto*, the Award is, *quod Tenens sine Defendens sequatur penes minimum Regem*; and the Tenant or Defendant ought to remove the Record into *Chancery*. *2 Inst. 269.*

In case of an Aid-Praier, the Plea is not put *sine Die*. *Ibidem.*

Aid lies in an Ejectment for the Defendant when the Title comes in Question: Also it shall be granted for a Defendant in Trespass, because he is to be charged with Damages. *Danv. Abr. 286.* So also for Bailiff to the Lord of a Town: And so for Tenant at Will. *Ibidem.*

Where Defendant Lessee for Life shall have Aid of the Lessor, or his Heir in the Reversion, tho' he may Value him. *291 Danv. Abr.* As also Tenant by Courtesy, and Tenant in Dower. *Ibidem 287.*

In Trespass for Cutting of Trees, Defendant justifies for Common of Estovers; as Lessee for Years to F.S. by Prescription, if Issue be, whether he cut them down of his own Wrong, or for the Cause aforesaid, the Defendant shall not have Aid, because the Issue is all in the Personalty. 21 E. 3. 41. But if Issue had been taken upon the Right of Estovers, he should have had it. *Dart. Abr. 291.*

Not grantable where the Issue is all in the Personalty.

In Personal Actions, Aid doth not lie of a Common Person till after Issue joined upon the Right of the Matter, but not upon the General Issue; because it doth not appear to the Court, whether the Right will come in Question or no; and if it doth not, there is no Cause of Aid. *Hard. 179.* It cannot be praied in another Term after Imparlance. *Ibidem.*

When Aid-Praier lies for a Common Person in a Personal Action.

In Real Actions, Aid-Praier of a Common Person lies before Issue joined; because there the Title of him in Reversion or Remainder appears by the Plea, *Ibidem.* For without shewing, he cannot draw his Plea.

When in Real Actions.

Tenant in Tail shall not have Aid of him in the Remainder in Fee, for that he himself hath an Inheritance. *Rel. Abr. 187. Pl. 2.*

Tenant in Tail shall not have it.

Lessee for Life, Remainder in Tail, Remainder in Fee, the Lessee shall have Aid of both Remainders at one time, because they begin together, and depend upon the first Estate. *1 H. 4. 63. b. Dan. 299.*

Lessee for Life shall have it of Remainder in Tail, and Remainder in Fee.

# Baron and Feme,

Baron and Feme, See { First Part 98.  
Abatement.  
Execution.  
Fine.  
Recovery.  
Cryals.

No Feme-Covert can be barr'd of her Freehold, without due Examination.

Court of Common-Bench, or Persons having Power by the King's Writ to examine her. 10 Rep. 42. b.

Feme examined upon a Recovery.

An Action lies against the Husband for Goods delivered to the Wife, if they came to his Use.

came to the Husband's Use. 1 Lev. 4, 5. 2 Lev. 16.

The Wife surviving, shall have a Bond enter'd into, to her and her Husband.

utors of the Husband.

A Feme-Sole hath a Lease and marries, it is at her Husband's Disposal.

his Wife, he shall enjoy it against her Executors. But if he makes no Disposition of it, and his Wife survives him, it remains

**N**O Feme-Covert shall be barr'd of her Inheritance, or Freehold, by her Confession; but where she is examined by the Chief Justice of the Common-Bench, or

The Usage is, in a Common Recovery suffered by Baron and Feme, to sue out a *Dedimus* for it. 10 Rep. 43. d.

An Action lies against the Husband for Goods delivered to his Wife, if she usually bought Goods, and her Husband paid for them; or if it can be intended or proved that those Goods

A Bond is enter'd into, to Husband and Wife, the Husband dies, and the Wife survives him, the Wife shall have the Bond, and not the Executors. 34 Ca. 2. B. R.

A Feme-Sole hath a Lease for Years and takes Husband, the Husband hath by the Marriage full Power to dispose of it; and if he survives

remain  
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The  
of all  
whether  
Wife o  
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remains to the Wife. *Hob. 3. Co. Litt. 46. b. Vide Postea at the End of this Title.*

The Marriage is an absolute Gift of all Chattels Personal in Possession, whether the Husband survive the Wife or not, unless she had them in *Auter Droit*. *Co. Litt. 351. b.*

A Woman brings a Writ of Error, and assigns for Error, That *tempore levationis Querele* she was *cooperta cum Viri*. The Defendant in the Error demurs, and adjudged for him: *Because she ought to have pleaded it in Abatement at first.* 7 W. B. R.

A Feme-Sole leases at Will and marries, the Lease continues still, and is not determined. 5 Rep. 10. a.

A Feme-Covert is Executrix, she can do nothing to the Prejudice of her Husband. 5 Rep. 27. b. But her Husband may release. *Ib.* But see the Case of *Mounson & Bourn*, Cro. Car. 519. where a Feme-Covert was Executrix, and Judgment against her Husband and her, and upon a *Sciri Fieri*, Enquiry against Baron and Feme, and a *Devastavit* found, and a *Scire Feci* returned, and a Judgment thereupon: It was objected, That the Feme could have no Goods, and therefore the Judgment void: But adjudged good, for the Husband being charged in the Right of his Wife, Judgment shall be against both; and in this Case, if the Husband had survived the Wife, he shall be charged; and when she dies, her Husband shall be charged.

An Action is brought against a Single Woman, who pending the Action marries, this shall not abate the Action. But the Plaintiff shall, notwithstanding the Marriage, proceed to Judgment and Execution against her, and take her in Execution by the Name of a *Single Woman*, according as the Action was commenced against her. *Trin. 12 W. B. R.*

A Man and his Wife recovered in Debt in the Right of the Wife, the Wife being dead, the Husband may sue out a *Scire Facias*, and have Exe-

Marriage is an absolute Gift of all Chattels Personal in Possession.

Coverture *tempore levationis Querele*, cannot be assigned for Error.

Feme-Sole leases at Will and marries, Lease continues.

Feme Executrix not to prejudice her Husband, her Husband may release.

The Husband shall be charged for his Wife's *Devastavit*.

A Feme-Sole, marries pending the Action against her, this doth not abate the Action.

She may be taken in Execution as a *Single Woman*.

Baron and Feme recover in Debt: Feme dies, Baron may sue out *Sci. Fa.*

cution:

cution: Because by the Judgment it became his own Debt, due in his own Right. 1 Mod. 179, 180.

Feme-Covert enters into a Bond as a Feme-Sole, it is void; and she may plead *Non est Factum*.

her Coverture, at the Time of the sealing of the Bond: And that shall make the Bond void; For a Feme-Covert cannot do any Act to oblige her self. 5 W. & M. B. R.

A Feme-Sole makes her Will, and gives her Lands to J. S. who she afterwards marries, and then dies, the Will is void.

A Feme Covert cannot submit to an Award.

How far another may do it for her.

which concerns the Feme, and be bound to the Performance of it; and such a Submission is a good Submission in Law, for it may be he may receive Benefit by the Submission; yet if he do not, it matters not.

The Husband nor his Estate liable to a Fine upon his Wife, but a *Capias pro Fine* must issue out against her.

The Husband shall not be punished for the Wife's Misceazance.

A Feme-Covert cannot take any Thing by a Gift from her Husband:

But the Husband may devise or settle to the Use of the Wife,

A Woman who was married entered into a Bond as a Feme-Sole, and she is afterwards sued as a Feme-Sole, and pleads *Non est Factum*, she may give in Evidence upon *Non est Factum*,

A Feme-Sole makes her Will, and devises her Lands to J. S. who she afterwards marries, and dies in his Life-Time, the Will is void. 4 Rep. 60. b. 61. a, b.

A Feme-Covert cannot submit to an Award, for the Submission is a free Act: And the Will of a Feme-Covert is subject to the Will of her Husband, and so is not free. But another Person may submit to an Award for a Matter

The Husband shall not be imprisoned for the Fine of his Wife, neither shall the Fine be levied upon the Goods of the Husband, but a *Capias pro Fine* shall issue out against the Wife: Because it is merely Personal Mich. 5 W. & M. B. R.

Where an Husband shall be punished for the Misceazance of his Wife, and where not. 9 Rep. from 70. b. 11 71. b.

A Feme-Covert cannot take any Thing by a Deed of Gift from her Husband: But an Husband may settle an Estate to the Use of his Wife, which is to take Effect after his Death. Co. Litt. 3. u. But she may take by the Consent of her Husband.

A Man and Woman enter into Articles to each other, and the Man enters into a Bond to a Third Person to perform the Articles; the Man and Woman afterwards marry, whereby the Articles became void. The Bond notwithstanding shall remain good, and the Husband may be sued upon it, and obliged to pay it, or so much as the *Quantum Dampnificatus* in the Articles shall be; and the Lord Chief Justice resembled this to the Case of a Man's being bound to permit his Wife to make her Will. Although the Wife cannot make a Legal Will, yet the Husband shall be obliged to perform such Will as she makes.

A Man and Woman enter into Articles, the Man becomes bound to a Stranger to perform the Articles, they marry, the Bond remains good, and the Husband may be sued upon it.

A Man is bound to permit his Wife to make her Will; though she cannot make a Legal Will, yet he must perform such Will as she makes.

such Will as she makes.

A Man enters into a Bond to a Woman, to leave her 500 l. if he died before her.

A Man enters into a Bond to a Woman, with Condition, that if he married her, his Executors or Administrators should pay her 500 l. after his Death; he marries her, and dies.

Here this Bond could not be sued during his Life, and therefore the Action upon it could not be suspended; but the Cause of Action grew only after the Death of the Husband, it being that his Heirs, Executors or Administrators, should pay the Wife 500 l. if she survived her Husband, which she did, and the Bond remains good to the Wife, and so it was adjudged *inter Affon & Gage, Mich. 11 W. Regis, per Turton & Gould, against the Chief Justice. Vide Cro. 34. 572. And Mich. 7 Anne, upon a Writ of Error in the Exchequer-Chamber, the Court inclined very much to affirm the Judgment, which the Plaintiff in the Errors perceiving, proceeded thereupon no farther.*

The Husband makes a Feoffment of the Wife's Land, it is a Discontinuance to the Wife, for the purging whereof she was put to her *Cui in Vita*, but could not avoid it by Entry, as she now may by the Stat. of 32 H. 8. cap. 28. *Townsend's Case, 1 Plow. 1116. b.*

Baron and Feme levy a Fine of the Wife's Land, the Husband only declares the Uses, it shall bind the Feme, if her Dissent doth not appear. 2 Rep. 57. a.

Baron makes a Feoffment of the Feme's Land, it is a Discontinuance, and how to be avoided.

32 H. 8. cap. 28.

Where the Husband declares the Uses solely, it shall be good, unless the Wife dissent.



Feme-Covert levies a Fine, it shall bar till her Husband's Entry.

10 R. 43. a. But if the Husband enters and dies, the Conuzee shall not have the Land: *Because by the Entry of the Husband the Conuzee's Estate was defeated, and the Wife's Ancient Estate revested in her, and the Husband was seized of the whole Estate in the Right of his Wife.* 7 Rep. 8. a, b.

The Husband Tenant in Special Tail levies a Fine, how long it bars the Entail.

Where the Fine of the Wife Tenant in Tail will not bar.

The Fine of the Son, Tenant in Tail in his Father's Life-Time, bars after the Father's Death.

Lease of the Wife's Land, how to be.

ancient Rent, or more, and the Rent must be reserved to Husband and Wife, and the Heirs of the Wife; and the Husband not to alien, discharge, or grant away the Rent, but during the Coverture only.

32 H. 8. cap. 28.

Where Husband and Wife levy a Fine of the Wife's Land, and neither of them declare the Uses.

Uses which are sufficient in Law, there the Law doth immediately revest the Uses in the Feme solely. 2 Rep. 57, 58.

A Wife levies a Fine, as a Feme-Sole, of Land whereof she was seized; this shall bar her and her Heirs, if the Husband doth not enter. Co.

Husband and Wife Tenants in Special Tail, the Husband levies a Fine and dies, the Estate Tail is barr'd, and not dissolved or determined, but hath Continuance so long as the Wife lives, or the Heirs in Tail remain. 9 Rep. 138. b. to 141. a.

But although the Wife hath an Estate Tail, yet she cannot levy a Fine, or suffer a Recovery: *Because she cannot bar that which was barr'd before by the Priority of the Act of the Husband.* 9 Rep. 142. b.

If the Son of a Tenant in Tail levies a Fine in his Father's Life-Time, this after the Father's Death shall bar the Entail. 9 Rep. 141. a.

To a Lease of the Wife's Land, which may be made for Three Lives, or 21 Years, or under, paying the Rent, she must be a Party and seal the Indenture, and the Rent must be reserved to Husband and Wife, and the Heirs of the Wife; and the Husband not to alien, discharge, or grant away the Rent, but during the Coverture only. 32 H. 8. cap. 28. See Co. Litt. 44, 45.

When Baron and Feme levy a Fine of the Wife's Land, and the Baron declares by one Deed the Uses, and the Wife by another; or else, that neither of them declares any

Baron and Feme Lessors in Ejectment, and do not say by Deed, and yet good: *Because there are many Precedents in the Case.* 2 Rep. 61. b. 3 Rep. 21. b.

The Husband only, and not his Wife, shall be imprisoned for want of Bail to an Action brought for the Debt of the Wife *dum Solus*: *Because the Wife cannot find Bail for her self, but the Husband must find Bail for her and himself, or be imprisoned; and before he is discharged, the Court will make him find Bail for himself and Wife.* 1 Lev. 216.

A Woman gives a Warrant of Attorney, and then marries; you may file a Bill, and enter Judgment against both Husband and Wife, by the Practice of the Court. *Show. Rep. 91.*

Where Baron and Feme are sued, the Feme cannot make an Attorney: But the Husband must make an Attorney for himself and Wife. 2 *Sand.*

The Husband is a Prisoner in the King's Bench, a Declaration is filed against him and his Wife, and Judgment is thereupon obtained against them by Default, and a Writ of Enquiry and Judgment, and Execution thereupon, and the Woman taken in Execution; but upon a Motion the Judgment was vacated, and a *Superfedeas* granted to the Execution against the Wife.

Baron and Feme are outlawed, and the Wife taken thereupon; she shall be set at Liberty, and the Husband shall be compelled to appear for his Wife; because he may bring a *Superfedeas*, which she cannot do.

In Trespass and Assault by Baron and Feme for a Battery of the Feme, *Et quod Def' alia enormia ei intulit*; and tho' objected, That the Wife cannot join for a Wrong done to the Baron; yet because the *Alia Enormia* was but Form, and only in Aggravation of Damages, and not the Substance of the Declaration, and after a Verdict, held good. *Cro. Jac. 664.*

Baron and Feme Lessors in Ejectment, and say not by Deed.

The Husband only shall be imprisoned for want of Bail for his Wife's Debt.

Feme-Sole makes a Warrant of Attorney, and marries.

The Wife cannot make an Attorney, but the Husband must for her.

Where Judgment against Husband and Wife, and the Wife taken in Execution, a *Superfedeas* granted for her.

The Wife taken upon an Outlawry, shall be discharged.

*Alia enormia eis* in a Declaration, good after a Verdict.

*Ad Dampnum ipsorum*, where good.

mages, for this Action will survive. 1 Syd. 387.

Trover by Baron and Feme *ad Dampnum ipsorum*, is naught.

of Goods, but the Husband solely is possess'd, the Law transferring in Point of Ownership the whole Interest in the Husband, and he must bring the Action. 4 Ja. 2. B. R. Yelv. 165, 166. Hetley 1.

The Wife shall be charged where the Conversion is alledged in her, because it is a Tort.

to be in the Defendant's, but in the Possession only, and the Point of the Action is in the Conversion, which is a Tort wherewith a Feme-Covert may be charged. Yelv. 165, 166.

She may be a Trespassor, and convert to the Use of her Husband, or a Stranger.

Use, in 13 Car. B. R. and Noy 126. and 79. But see Cro. Car. 234. Cro. Jac. 661. Jones 16, 444.

How Baron and Feme to plead for a Trespass of the Feme.

his Wife is Not Guilty, this is naught; for the Husband only pleads here, and not the Wife; for it should be dicunt, *Tu* she is Not Guilty. Hetley 10.

Trover before Marriage, Conversion after, is good, brought by Husband and Wife.

to the Wife, although the Conversion is the Perfection of the Cause. 2 Lev. 107.

The Wife cannot sue out an Execution in her and her Husband's Name when dead.

So in Trespass and Assault they may say, *Ad Dampnum ipsorum*, tho a Feme-Covert can have no Damages, for this Action will survive. 1 Syd. 387.

Trover was brought by Baron and Feme, and it is laid *ad Dampnum ipsorum*, this is naught: Because Husband and Wife cannot be Joint-Tenants.

Also Trover was brought against Husband and Wife, and a Possessor and Conversion laid in them both, and held to be good: Because this Action is not grounded upon any Property supposed.

For she may be a Trespassor, and convert Goods to the Use of her Husband, or to the Use of a Stranger, although she cannot convert to her own Use.

Trespass and Assault against Baron and Feme, for the Assault of the Feme, the Baron and Feme defend the Force, &c. And the Baron says, *Tu* Force, &c. And the Baron says, *Tu* Force, &c. And the Baron says, *Tu* Force, &c.

Trover before Marriage, and Conversion after Marriage, was brought by Husband and Wife, and good with or without the Wife: For the Trover gives the Inception of the Action.

Baron and Feme recover Judgment, then the Husband dies, and the Wife sues out an Execution in her and her Husband's Name: And upon a Motion it was quash'd. 6 W. 3. M.



A Feme-Sole recovers Debt and takes Husband, and Execution is upon a *Sci. Facias*, upon that Judgment adjudged to the Husband and Wife; then the Wife dies, and the Husband sues out a *Sciri Facias* in his own Name; and the Court seemed to be of Opinion, that he well might: For that by this Awarding of Execution the Husband shall have the Debt by Survivorship; and that if the Husband should die before Execution, the Administrator of his Wife should have it. *Goodyear's Case*, 9 W. B. R.

A Writ is brought against Baron and Feme, although she never was his Wife, yet he must file Bail for himself and her. But it shall not be any Estoppel to him to plead that she is not his Wife.

Coverture may be given in Evidence upon the General Issue: Because whatsoever a Feme-Covers doth, is absolutely void.

Upon Not Guilty in Trespass for an Assault and Battery by Husband and Wife, the Husband is found Guilty, and the Wife Not Guilty, and held to be well. *Show. Rep.* 350.

Baron and Feme cannot take by Moieties. *Nichols & Nichols Case*, 2 Plow. 483. a.

A Woman takes Husband, living her first Husband; this is a void Marriage. *Cro. El.* 857, 858.

One of Fourteen marries a Wife of Ten, the Husband, when the Wife comes to Twelve, may disagree as well as the Feme: Because in all Contracts of Matrimony, each ought to be bound, and equal Election given to both. *Co. Litt.* 79.

The Age for a Male to marry is Fourteen, and for a Female Twelve. *Co. Litt.* 23. b.

Baron and Feme are divorced *Causa Adulterii*, yet they continue Man and Wife; for it is not a *Vinculo Ma-*

Feme-Sole recovers a Judgment, marries and dies: The Husband sues out a *Sci. Facias*, and hath Judgment, good.

Opinion, that he well might: For that by this Awarding of Execution the Husband shall have the Debt by Survivorship; and that if the Husband should die before Execution, the Administrator of his Wife should have it.

A Writ is brought against Baron and Feme when she is not his Wife, yet he must file Bail for her.

Coverture may be given in Evidence upon the general Issue.

Trespass and Assault against Baron and Feme, and only Baron found guilty.

Cannot take by Moieties.

A Woman marries another, living her first Husband, it's void.

How it is in Case of Marriage before Years of Consent.

When a Male may marry, and when a Female.

A Divorce *a Mensa & Thoro* doth not dissolve a Marriage.

*trimonii,*

*trimonii*, but only à *Mensa & Thoro*, and she shall have her Dower. *Co. Litt. 33. b.*

An Ideot may marry.

How long Marriages have been in Churches, and how it was before.

the Man came to the House where the Woman inhabited, and led her home to his own House, which was all the Ceremony then used. *More 170.*

The Husband cannot devise a Term granted to himself and Wife.

The Husband cannot grant a Term from his Wife, where she hath but a Possibility, and no Interest.

dies before her, it will survive: *Because the Feme had only a Possibility, and no Interest.* *Co. Litt. 46. b.*

The Husband cannot charge his Wife's Term with a Rent.

A Feme before Marriage grants a Term to her own Use, yet the Husband shall have the Money.

by the Receipt the Husband had a Property. *March. 44. 45. Alister* where the Husband before Marriage, being a Party to the Deed, had consented to it, that it should be for her own separate Use.

Baron shall have Administration to his Wife.

Stat. of Distributions not to extend to Feme-Coverts Estates.

29 *Ed. 2. cap. 3.*

An Ideot a *Nativitate* married; it's a good Marriage, and his Children shall inherit. *1 Syd. 112.*

A Marriage out of a Church is good. *Note*, Before the Time of Pope *Innocent III.* there was no Solemnization of Marriage in Churches; but

If a Lease be made to Baron and Feme for Years, the Baron cannot devise the Term, for the Feme is in by Survivorship, before the Devise takes Effect. *Co. Litt. 351. a.*

Where a Lease is made to Baron and Feme for their Lives, Remainder for a Term to the Executors or Administrators of the Survivor, the Baron cannot grant the Term, but if he

The Husband grants a Rent out of a Term of his Wife, and dies, she shall hold it discharged: *Because she comes paramount the Charge.* *Co. Litt. 351. a. 184. b. 7 H. 6. r.*

A Feme before Marriage grants over a Term to her own Use, the Husband shall have the Money, which by his Wife in her Life-Time was actually received upon this Trust, for

Administration of the Wife's Estate ought to be granted to the Baron. *1 Rol. Abr. 910. Pl. 1. Note*, The Statute of Distributions shall not extend to the Estates of Feme-Coverts. *29 Ca. 2. cap. 3.*

Where

Where the Feme is examined by Writ, she shall be barr'd, else not. Co. 16 R. 43.

Where the Feme is examined by Writ, she shall be barr'd.

Baron and Feme acknowledge a Deed to be inrolled, this doth not bind the Feme: Because she is not examined by Writ. 16 Co. 43. 2 Inst. 673.

Not by Deed inrolled.

The Husband shall have a Quare Impedit alone. 38 H. 6. 3. b. Owen 822 Litt. R. 13.

May have a Quare Impedit alone.

In all Cases where the Feme shall not have the Thing when it is recovered (as in Trespas upon his Wife's Land. Bull. 21.) Neither alone to

Where the Baron shall have the Action without the Feme.

her self, nor jointly with her Husband, but the Husband only shall have it; there he alone, without his Wife, shall bring the Action. 1 Rol. R. 360. But for a Barony done to the Wife, they must join. 10 H. 8. 9. and the Judgment must be,

And where they must join.

that Baron and Feme do recover, though the Husband only is to have the Damages. Godb. 396. Fent. R. 28.

If a Bond be made to a Feme-Covert during Coverture, for Payment of Money to the Feme, the Baron alone may bring the Action upon this Bond. 3 Lev. 403.

The Husband must bring the Action upon a Bond entered into to his Wife.

They must join in an Avowry for Rent in Right of the Feme. 1 Rol. Abr. 18. Pl. 1, 2. Litt. R. 375.

Both must join in an Avowry for Rent.

Whatever the Consideration is, if there be an expresse Promise made to the Wife, they may join. Cro. El. 61.

Where they may join.

In an Action upon a Devastavit against Baron-Executrix, it must not be said quod Devastaverunt, for a Covert cannot waste. 2 Lev. 145.

A Feme cannot waste.

If a Lease be made to Baron and Feme rendering Rent, the Feme may, after the Death of the Baron, disagree to it. 2 H. 4. 19. b. Br. Baron and Feme. 29.

Where the Feme may disagree to a Lease.

Where a Feme makes a Contract to the Use of her Husband, and it comes to his Use, it shall bind him. 10 H. 6. 22.

Where the Feme's Contract binds her Husband.



Where it is for Necessaries.

1 Syd. 120. So of necessary Diet, Lodging, &c. Allen 61.

And where not.

from trusting of her; afterwards she desires to cohabit with her Husband, which he refuses; afterwards one who had Notice trusted her with Necessaries, the Husband shall not be charged. Manby & Scott. 1 Syd. 109, 110. 1 Mod. 9.

No Action lies against Baron after his Wife's Death:

Nor liable after his Wife's Death, to a Judgment recovered against her *Sola*.

But where there is a Judgment against a Feme-Sole who marries, and the Judgment is had upon *Sci. Fa.* against Baron and Feme, and then the Feme dies, a *Sci. Fa.* will lie against the Baron, to shew Cause why Execution should not go against him upon the first Judgment, for upon the Award of the Execution it became his Debt. 3 Mod. 186, &c.

So where she buys Things for her necessary Apparel without her Husband's Consent, it shall bind him.

A Woman departs from her Husband without his Consent, and the Husband prohibits several Persons

If a Feme be indebted to another before Marriage, and before the Debt is recovered dies, the Husband shall not be chargeable. 20 H. 6. 22. 6.

If there be a Judgment in Debt against a Feme-Sole, who marries and dies, the Baron shall not be charged therewith. 3 Mod. 186.

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Bar

# Bar in Action.

Bar in Action, See { 1st Part 100.  
Pleas and Pleadings.  
Actions.  
Outlawry.

**BAR**, is when the Defendant in any Action pleads a Plea, which is a sufficient Answer, and destroys the Action of the Plaintiff for ever.

Bar, *Quid.*

Where a Man is barr'd in any Real or Personal Action, by Judgment, upon Demurrer, Confession, or Verdict, he is barr'd as to this or the like Action for the same Thing for ever. 6 Rep. 7.

Once barr'd by Verdict or Demurrer, is a Bar for ever.

A Judgment for the Defendant in Trespass, upon a special Verdict, is a good Bar to an Action of Trover for the same Goods. *Shon. Rep. 146. See 2 Ventr. 169, 170. and Raymond 472. seems contra.*

A Recovery in Trespass, is a good Bar in Trover.

An Action was brought, and there was a Fault in the Declaration, in the not assigning of a good Breach in a Covenant; whereupon there was, upon a Demurrer, Judgment given, *quod querens nil capiat per Billam sed pro falso clamore suo sit inde in Misericordia*;

The Plaintiff shall not be barr'd where Judgment is given upon a Fault in the Declaration, and not upon the Merits of the Cause.

Afterwards the Plaintiff brings another Action for the same Matter, and assigns the Breach, as it ought to be; whereupon the Defendant pleads the former Action brought, and that it was barr'd by the Judgment upon the Demurrer. The Plaintiff replied, That the Judgment was not given upon the Merits of the Cause, but upon a Mistake in the Declaration, in not saying (and so set forth the Cause). The Defendant demurred, alleging, That the first Judgment was a Bar: But the Court

L

gave

gave Judgment for the Plaintiff. *Coppin and Slaymaker. Hill. 34. 35 Car. 2. Ret. 847. B. R. Dyer 271. 1 Mod. 207. 2 Mod. 42.*

Where once barr'd and always barr'd, holds good.

**The Rule in Personal Actions,** once barr'd and ever barr'd must be intended where it is a Bar to the Right, not where the Action is misconceived. *Co. 6. R. 8.*

Where Outlawry must be pleaded in Bar, and where in Abatement.

**If an Action of Debt be brought,** and the Defendant imparles till the next Term, yet after his Imparlance, he may plead in Bar of the Action, that the Plaintiff is Outlawed, the Action being in Debt; but if the Action were in Trespass or Case, it must be pleaded in Abatement only: *Because, when the Action is in Debt, it is reduced to a Certainty, and the Debt is forfeited to the King, and consequently a good Bar: But it is not so where only Damgages are to be recovered.*

Where *de Injuria sua propria* is an ill Replication.

**Where a Plea in Bar contains a Title,** there *de son Tort sans riel cause*, is a naughty Replication. *1 Lev. 307. See Title de Injuria sua propria.*

Where Conuzans in another Replevin pleaded in Bar.

**The Plaintiff pleaded in Bar a Conuzans in another Replevin,** and naught; because he had not averred, that the other Conuzans was with the Master's Consent.

A Bar must be answered, avoided, or confessed.

**A Bar not answered, avoided, or traversed,** was an Exception to a Replication. *Lutw. 1342.* And allowed by the Court to be a good Exception.

Plaintiff shall not have judgment, if the Bar be naughty, if his Declaration be not good.

**Where the Bar is naughty,** yet if the Plaintiff shews no Title in his Declaration, he shall not have Judgment. *Hob. 128.*

Recovery in an Assumpsit is a good Bar in Debt.

**A Recovery in an Assumpsit,** will be a good Bar in Debt for the same Thing. *Co. 4. R. 94. 4.*

Where a Covenant may be pleaded to an Action of Debt.

**In Debt for Rent upon a Lease for Years,** the Defendant may plead in Bar a Covenant, that the Lessee shall deduct so much for Charges;

for the Covenant being in the same Deed, and Executory, is pleadable in Bar, to avoid Circuity of Action. *1 Lev. 151.*



## 947

Where the Plaintiff is  
 Estopped to have another  
 Action.

And where not

A Verdict, without a Judgment entered upon it, cannot be pleaded in Bar of another Action. 2 *Browl.* 122.

What is a Bar to another Action.

James M. Smith  
J. H. Smith  
J. H. Smith  
J. H. Smith  
J. H. Smith  
J. H. Smith  
J. H. Smith  
J. H. Smith

the office of Common Pleas in D. R.  
pieces in this with the Clerk of  
and Richard Roe, Justice of the Peace  
Common Pleas, D. R.

**Bail**

[illegible]

# Bail, & Bail-Bonds.

First Part 102.

**Habeas Corpus.**  
**Capias ad Satis.**  
**faciendum.**

Bail, and Bail-Bonds, See

**Attorney.**  
**Discharge.**  
**Obligations.**  
**Reddidit se.**  
**Sheriff.**

A Common Bail, *Quid.*

**A** Common Bail, is John Doe and Richard Roe, which Bail-Piece is filed with the Clerk of the Files of Common Bails in B. R.

Special Bail are taken before a Judge, or by Commissioners in the Country, and when accepted, then they are filed.

Where Common Bail is put in, it shall be Common Bail to all other Declarations the same Term, except Ejectments.

If Common Bail be put in to an Action depending here, where the Defendant comes in by Process of the Court, (not in the Case of an Ejectment) that Bail so put in, is liable to be Common Bail to all other Persons that shall put in Declarations against him that Term, *scilicet* Curia, and not otherwise.

A Bail cannot be a Witness for a Defendant.

One that is Bail, cannot be a Witness for the Defendant at the Trial; but in that Case, the Court upon a Motion will discharge a

Man Bail in his Room.

Bail upon the adding of another good

When Special Bail is to be put in of *Trinity* and *Hillary* Terms.

In any Action brought in this Court, where the Defendant, according to the Course of the Court, ought to put in Special Bail; such Defendant,

in the several Terms of *St. Hillary* and *Trinity*, shall have liberty to put in good Bail at the Suit of any Plaintiff, before the

the Continuance-Day to be appointed by the Secondary after the End of those Terms: And within that Time, the Plaintiff shall not sue forth any Process against the Defendant or his Bail upon the Bail-Bond for his Appearance.

And also it is further ordered, That in the several Terms of *Easter* and *Michaelmas*, if the Defendant be

And when of *Easter* and *Michaelmas* Terms.

arrested in *London* or *Middlesex*, upon any Process out of this Court, the Defendant shall have Liberty to put in good Bail at the Plaintiff's Suit, at any Time within Eight Days after the Return of such Writ or Precept, and Fourteen Days after the Return of any Writ sued out into any other County, *per Curiam die Mercurii prox. post quinque septimanas Pasche. 11 W. R.*

So Defendant, who hath been arrested by Virtue of any Process issuing out of this Court, shall be compelled to put in Bail for a greater Sum than in such Process is contained; and if any Plaintiff shall declare against a Defendant, upon any Bail by him put in for a greater Sum than is expressed in the Process upon which the Defendant was arrested, then that Bail put in shall not be liable to that Action: And altho' the Plaintiff will enter a *nolle Prosequi*, or remit the Overplus Sum to make it agree with the Debt in the Writ, yet the Court will not allow it. *3 Annae, B. R.*

How far Bail shall be liable:

A Man was Bail before a Judge by the Judges Directions for 40 l. And upon the Tryal the Jury gave 100 l. Damgages in this Case; the Bail are not liable: *Because they were Bail but in 40 l. and here the Recovery makes the Recognizance void.* But *Quere* whether the Bail ought not to bring the 40 l. into Court.

Where Bail before a Judge in 40 l. and 100 l. Damgages are recovered.

In all Cases where the Sheriff sues a Bail-Bond, if the Defendant cannot plead *comperuit ad Diem* to the Action, he must pay Costs upon staying of Proceedings upon the Bail-Bond: For in all Cases, where a Man will have a Favour, he must pay for it; for if he cannot plead *comperuit ad Diem*, so that in Strictness the Bond is forfeited, (let the Defendant's Case be what it will) it will be a Favour to the Defendant to stay Proceedings upon the Bail-Bond. *Vic. Middlesex & Newcomb. Hill. 7 W. B. R.*

Where the Defendant cannot plead *comperuit ad Diem* to an Action; upon a Bail-Bond, he must pay Costs.



Where the Cause hath been under Agreement, the Court will stay Proceedings upon a Bail-Bond.

Plaintiff to proceed in the Original Action. 3 *Annæ. B. R.* This Matter is now by the Statute of 4 & 5 *Annæ* left to the Judges: Which see *Postea* in this Title.

When the Principal may render himself in Discharge of his Bail.

Marshal in Discharge of his Bail, and enter the *Redditis se* in the Marshal's Book lying in the King's Bench Office: And then the Defendant's Attorney

And how the Render to be, and how to discharge the Bail.

otherwise the Bail are chargeable, notwithstanding the Prisoner is in Custody. *Vide Postea.*

Bail-Bond to a Sheriff; and says not of what County, nor to whom to answer.

Impossible Condition the Bond is single, but void by pleading the Statute, 23 *H. 6. ca. 10.*

How Bail-Bonds to be assigned by the Statute, 4 & 5 *Annæ.*

*minster.* at the Suit of any Common Person, and the Sheriff or other Officer takes Bail from such Person, the Sheriff or other Officer, at the Request and Costs of the Plaintiff, or his lawful Attorney, shall assign to the Plaintiff in the Action such Bail-Bond, or other Security taken from such Bail, by endorsing of the same, and attesting it under his Hand and Seal, in the Presence of two or more credible Witnesses: which may be

To be stamp'd before Action brought.

But upon Oath made, That the Cause hath been under Agreement, the Court will set aside the Proceedings upon the Bail-Bond upon putting in of good Bail, and will compel the

Before a *Scire facias* is taken out against the Bail, or before the Return of the Second *Scilicet*, the Principal may render his Body to the Marshal, and enter the *Redditis se* in the King's Bench Office: And then ought to get a Certificate from the Prison, that the Defendant is in Custody; and thereupon the Master of the Office will discharge the Bail-Piece, by writing *Redditis se* upon it,

A Bail-Bond was entred into to a Sheriff, and says not of what County; and also to appear generally, without saying to what Action, and yet held good. 2 *Lev. 123.*

Where a Bond is entred into to the Sheriff, with an impossible Condition, the Bond is single: But if the Statute of 23 *H. 6. cap. 10.* be pleaded, it is void. 3 *Lev. 74.*

By the Statute of 4 & 5 *Annæ.* it is enacted, That if any Person shall be arrested by any Writ, Bill or Process, out of any of the Courts at *West-*

done without any Stamp, provided the Assignment so endors'd be duly stamp'd before any Action be brought there.

thereupon: And if the Bail-Bond or Assignment, or other Security taken for Bail, be forfeited, the Plaintiff in such Action, after such Assignment, may bring his Action thereupon in his own Name.

The Assignee to bring an Action in his own Name.

And the Court, where the Action is brought, may by Rule give such Relief to the Plaintiff and Defendant in the Original Action; and to the Bail upon the said Bond, or other Security taken from such Bail, as is agreeable to Reason and Justice;

The Court may give such Relief to the Plaintiff or Defendant as they shall think fit.

And that such Rule or Rules of the said Court, shall have the Nature and Effect of a Defeazance to such Bail-Bond, or other Security for Bail.

to Reason and Justice;

And also to the Bail.

Where a Bill is filed (for the Purpose) of *Easter Term*, and the Defendant puts in Bail of *Trinity Term* following; the Bail, tho' put in of *Trinity Term*, shall yet be liable to the Action brought in *Easter Term*: Because the Action was then depending. *Pas. 8 W. B. R.* But if the Bail be put in of *Easter Term*, and the Bill be filed of *Trinity Term* following, there the Bail shall not be liable; because there was no Action depending when the Bail was put in.

Where Bail shall be liable where an Action is depending, and where not.

When not liable, and why.

Render upon the Day of the Return of the Second *Scire facias*, or other Process against the Bail.

If the Defendant renders himself to the Custody of the Marshal in Discharge of his Bail, upon the Day of the Return of the Second *Scire facias* against the Bail, *sedente Curia*: Or if an Action be brought upon the Recognizance, if he renders himself upon the Day of the Return of the Process against the Bail, *sedente Curia*, the Bail are discharged, *per Magistrum Livesay & alios*.

The Bail are discharged.

Note, This Discharge must be upon a Motion and Rule of Court; but this Matter cannot be pleaded, if there be a *Capias ad Satisfaciendum* returned against the Principal; but if there be no *Capias ad Satisfaciendum*, then it may be pleaded. That there is no *Capias ad Satisfaciendum* returned and filed, and that is a good Plea.

Upon a Motion of Court, not by Pleading, unless no *Capias ad Satisfaciendum*, be returned and filed.

The Bail may plead Death before the Return of the *Capias ad Satisfaciendum*.

Return of the *Capias ad Satisfaciendum*, which was the Writ to which he should render himself, the Recognizance was not broken.

The Party dies after the *Capias ad Satisfaciendum* returned and filed, and before *Sci' fa'*.

*Capias ad Satisfaciendum* dies before any *Sciri facias* sued out against the Bail. Yet this shall not excuse the Bail, because he died after the *Capias ad Satisfaciendum* returned and filed.

What may be done, *ex gratia Curiae*.

and before the Day of the Return of the second *Sciri facias*.  
1 Roll. Abr. 250. N<sup>o</sup> 6.

But if the Defendant had died before a *Capias ad Satisfaciendum* returned and filed, there the Bail had been discharged.  
*Ibidem*, N<sup>o</sup> 7.

So where the Party died after *Capias ad Satisfaciendum* returned and not filed, the Court stopt the filing of it.

How the Bail in an Inferior Court must render the Principal in a Writ of Error brought in B. R.

the Bail; but the Render must be upon Record, and so pleaded. *Irim* 35 Car. 2. B. R.

Of Bail-Pieces, and Common Bails.

dant, and Bail. And when filed in the Office of the Court, they are become a Record, and a Warrant for the Officer to enter up the Recognizance upon Record. And where the Writ requires Special Bail, a Common Bail-Piece shall be a good *Comperuit ad Diem*, so long as the Bail-Piece remains upon the

If the Defendant dies before the Return of the *Capias ad Satisfaciendum* against him, his Bail may plead this in their Discharge to a *Sci' facias* against them: Because dying before the

Where a Man becomes Bail, and the Plaintiff recovers, and a *Capias ad Satisfaciendum* is duly sued out, and returned and filed against him; and afterwards the Defendant in the *Ca-*

But (*ex gratia Curiae*) they do give the Bail time to bring in the Defendant after a *Capias de Satisfaciendum*,

So also where the Principal died after a *Capias ad Satisfaciendum* returned, and before it was filed, the Court upon a Motion stayed the filing of it in Favour of the Bail. *Mich.* 35 Car. 2. B. R.

Where a Judgment was recovered in an Inferior Court, and a Writ of Error brought, and the Bail renders the Principal pending the Writ of Error, it is a good Discharge of

Bail-Pieces, are small Pieces of Parchment, on which is written the Names of the Plaintiff and Defen-

File;



File; but the Court upon Motion will order it to be taken off from the File: Because it is irregularly filed.

When Bail are taken in the Country by a Commissioner, by Vertue of the Statute of 4 & 5 W. & M. cap. 4. a *Scire facias* may be sued out against them, either in *Middlesex*, or the County where the Bail was taken. *Lutw. 1287.*

A Judge of Assize may, by Vertue of the Statute of 4 & 5 W. & M. c. 4. take Bail in his Circuit, which shall be transmitted up to a Judge of the Court, where the Action depends without Oath. But upon Commissioners taking of Bail, when it is transmitted up, there must be Affidavit made by some credible Person present at the taking of the Bail, of the due taking thereof. The Commissioner is to have but 2 s. but must take the Fees for filing, and transmitting them up to the Judge, where the Bail-Piece is left.

How Bails taken in the Country shall be justified. 4 & 5 W. & M. cap. 4. sect. 2.

If the Plaintiff requires Special Bail, he ought to shew his Cause of Action before the Judge that takes the Bail, or else to draw such a Declaration as he will stand to, and shew it to the Defendant's Attorney, that it may appear to the Court, that there is Cause why Special Bail should be given, otherwise Common Bail is to be filed. But now by the late Statute: If the Plaintiff do not shew the Cause of Action in his Writ by way of *Ac etiam Bille*, &c. the Defendant may file a Common Bail; also, if the Defendant be in Custody upon a Writ with an *Ac etiam Bille*, and the Plaintiff doth not remove him to the *King's Bench* within two Terms; or now, by Vertue of a late Statute, declare against him in *Custodia Vicecom.* Then upon Application made to a Judge, and Certificates of these Matters, a Judge will grant a Warrant for a *Superfedeas*. See Title Prison and Prisoners.

Where *Scire facias* may be sued upon Bail, taken by Commissioners in the Country.

Stat. 4 & 5 W. & M. cap. 4.

How Bail taken by a Judge of Assize, and how by Commissioners, shall be transmitted up.

4 & 5 W. & M. cap. 4.

When upon Oath.

The Fees of it.

The Fees of it.

How to be justified.

4 & 5 W. & M. cap. 4. sect. 2.

The Plaintiff ought (if required by a Judge) to shew his Cause of Action, or Declaration, which requires Special Bail.

Where a *Superfedeas* will be granted for a Prisoner in Custody.

Where

No Executor or Administrator shall put in Bail in any Court, nor upon a Writ of Error:

Except in Cases of a Devastavit:

Or of his own Act.

upon a Motion, will order a Writ for Special Bail. Note, For in the former Case he is in Auter Droit, and liable no farther than he hath Asserts, be the Cause of Action never so great: But in the later Cases he shall put in Bail, such as the Action would require if he were not Executor.

Bail may plead Payment of the Sum recovered, But not of a lesser Sum.

the Bail may plead Payment to the Plaintiff, in regard the Condition of the Recognizance is to pay the Condemnation-Money, or render the Body; yet the Bail shall not plead Payment of a lesser Sum in Satisfaction after the Money became due. 2 Lev. 212.

Two became Bail, and Judgment against them, and a *Capias ad Satisfaciendum* sued out against one of them, and good; but to have Execution, joint or several, ought, the Execution also, joint and several.

*Capias ad Satisfaciendum* will well lie, tho' the Recognizance is to be levied *de Terris & Catallis*.

Where a Man renders his Body in Discharge of his Bail, the Plaintiff ought to charge him in Execution.

Where one is sued as an Executor or Administrator, he is not compellable to put in Special Bail, although it be upon a Cause removed by *Habeas Corpus* out of an Inferior Court, nor upon a Writ of Error brought by him, but in case of a *Devastavit* for wasting of the Goods of the Testator, or where the Action is brought for something done by him since he became Executor. The Court, if they see Cause

To a *Scire facias* against Bail, they plead Payment and Acceptance in Satisfaction of a lesser Sum than the Judgment, and naught. For although

Two became Bail, and Judgment was had against them upon a *Scire facias*, and a *Capias ad Satisfaciendum* was sued out against one of them only, and held good; Because the Judgment is not a Judgment to recover, and is to be according to the Recognizance. But where the Judgment is joint, so joint and several, although the *Scire facias* be joint, yet the Execution may be several. 1 Lev. 226. Note, tho' the Recognizance be to levy *de Terris & Catallis*, yet Execution of the Body is good; because it is the Law and Usage of the Court. *Ibid.*

If the Defendant do render his Body into Custody in Discharge of his Bail, the Plaintiff ought by the Rules of the Court to make his Choice, whether he will proceed afterwards

to charge the Body of the Prisoner in Execution, or to take his Goods, or have an *Elegit* against his Lands. For he ought not to proceed against both, and now it is in his Power to make his Election. And upon a Motion, the Court will order him to do either the one or the other by a certain Day.

The Court will not bail one, that appears in Court upon the Return of his *Habeas Corpus*, before the same be filed, and they have considered thereof to inform themselves, whether he isailable by the Law or not: For before that, it doth not appear Judicially to the Court for what Cause the Party stood committed.

One under Age is not to be admitted to be Bail for another; because he cannot enter into a Recognizance.

The putting in of a Declaration, and the Acceptance of it by the Defendant's Attorney with the Privy of the Plaintiff's Attorney, is counted an Acceptance of the Bail. For by accepting of the Declaration, he admits the Defendant to be in Court, and takes upon him to plead.

After Bail put in before a Judge, the Plaintiff hath Twenty Days Time to except against it; which Exception

must be entered in the Bail-Book at the Judge's Chamber, at the Side of the Bail there put in, in this manner, viz. *I do except against this Bail: J. A. Attorney pro Quer.* And you must put the Day when you enter your Exception. But if there be no such Exception entered in the Bail-Book, then the Defendant's Attorney may take the Bail-Piece away from the Judge's Chamber, and file it *Nolens volens* the Plaintiff's Attorney (and so may the Plaintiff's Attorney also). And if the Defendant doth not file it in time, he incurs the Penalty of 5 *s.* *Mich.*

*17 Car. B. R. per Cur.* See some Alteration made in this Rule, by another Rule made since.

If a Privileged Person in this Court do bring an Action here for his Fees against another Person (who is not Privileged) he ought by the Course of the Court to have Special Bail to his Action, whether there be Cause of Special Bail or not.

When the Court will Bail a Prisoner, who appears in Court upon a Return of a *Habeas Corpus*.

An Infant cannot be Bail.

What shall be an Acceptance in Law of the Bail.

Acceptance of the Bail.

How to except against Bail at a Judge's Chamber.

There shall be Special Bail to an Action brought by an Attorney for his Fees.



The Sheriff may take a Bail-Bond, or an Attorney's Hand, for the Appearance of the Defendant upon an Outlawry.

7 & 8 Ed. 3. cap. 11.

Court at the Return of the Writ, and to do such Things shall be required by the Court. Also he may by the same Statute Reverse the Outlawry by Attorney, and is not obliged

7 & 8 Ed. 3. cap. 11.

*Audita Querela* lies for the Bail, where the Judgment is Revers'd by the Principal.

But the Bail cannot have any Advantage of an Error in the Judgment against the Principal.

The Bail may to a *Scire facias* plead a Release to the Principal.

But cannot plead a Writ of Error depending.

No Bail upon a Writ of Error upon a Bond to perform Covenants.

1 Lev. 260. Because the Words of the Statute are for Payment Money only.

Where Special Bail is not allowable.

Conspiracy, Slander, &c. unless there be a Special Rule Court, or an Authority under a Judge's Hand for it.

One that is Outlawed and Arraigned upon the Outlawry, may, by Virtue of a late Statute made 7 & 8 Ed. 3. cap. 11. take an Attorney's Hand for his Appearance; or if it require Bail, the Sheriff must take a Bail-Bond with two Sureties, to appear in Person, (as formerly) to put in Bail, except where Special Bail shall be ordered by the Court.

If the Judgment recovered against the Principal, be reversed by a Writ of Error brought by him, his Bail may have their Writ of *Audita Querela* to discharge themselves. For Discharge of the Principal, is in Law a Discharge of the Bail. But the Bail cannot have any Advantage of an Error in the Judgment against the Principal; because he cannot bring a Writ of Error upon it.

Upon a *Scire facias* against the Bail, they pleaded a Release made to the Plaintiff to the Principal, and judged a good Plea. But they cannot plead a Writ of Error depending upon the principal Judgment. *Br. and Price, M. 7 W.*

No Bail to be put in upon a Writ of Error upon Debt, upon a Judgment recovered upon a Bond, with Condition to perform Covenants.

This Court allows no Special Bail upon a Penal Statute or By-Law, in any Action of Trespass, Assault,

If the Plaintiff does not declare against the Defendant in Two Terms; after Bail is put in, the Defendant may, if he please, Nonsuit the Plaintiff, and then the Bail are discharged.

When one becomes Bail for another in an Action of Debt, he doth bind himself in a Recognizance to answer the Body of the Principal, if he be condemned; or else pay the Debt and Damages he is condemned in; and if he doth either, it is sufficient to discharge himself.

If the Defendant doth put in sufficient Bail to the Plaintiff's Action, and he will not accept it. The Court upon Examination of the Matter, and upon the Oaths of the Bail, finding them to be House-keepers, and sufficient Persons, may take it, and allow it, whether the Plaintiff will or no. For the Court is indifferent Judge between the Parties.

Bail is never taken in Court, but in a Judge's Chamber; and if the Plaintiff excepts against them, then a Bail-Piece is brought into Court, where the Bail also appear. And upon the Defendant's Motion, they are sworn to be House-keepers, and to what they are Worth, and then are allowed or disallowed, as the Court sees Cause.

But if you sue out a *Sci facias* against the Bail upon their Recognizance taken before a Judge of this Court, though the Action is laid in London, or in any County of England, the *Sci facias* must be in Middlesex: Because the Recognizance is supposed to be taken at Westminster where the Court sits. 3 Annæ B. R.

But upon a Recognizance upon a Writ of Error, it is otherwise: Because the Bail is taken at a Judge's Chamber. 3 Annæ B. R.

An Original is sued out in London, and Bail put in, and the Declaration made in another County. It is good against the Defendant; but his Bail is discharg'd, and not liable to a *Sciri facias*. 3 Lev. 235,

Bail may be discharged, if the Plaintiff doth not declare in two Terms.

The Recognizance of the Bail.

Where Bail are taken, and where justified.

*Sci facias* against the Bail must be in Middlesex, because supposed to be taken in Court.

Otherwise upon being Bail upon a Writ of Error.

Where Bail are discharged, by declaring in a wrong County.

The Bail-Piece was discharged upon a *Reddidi* *se.*

Judgment against the Bail, and afterwards the Bail-Piece was mark'd *Reddidi se.* and yet the Bail were then held to be chargeable. For that the Plaintiff had done what he could well.

But afterwards, in another Case of this Nature, the Judgment was set aside upon Payment of Costs.

Upon suing of Bail, where a Bail-Bond is sued, the Rules for Pleading are the same as in the Original Action.

The Defendant puts in good Bail, and moves the Court for a Rule to stay Proceedings, then upon Payment of Costs, the Court usually does it.

Also where a Bail-Bond is sued, and the Defendant appears, and pleads Issue, and Notice of the Tryal is given, the Court hath, if a good Cause shewn, admitted the Defendant in the Original Action, to put in good Bail to the Original Action, and pay Costs, and have stop'd any further Proceedings upon the Bail-Bond; but it is great Indiscretion in the Defendant to refuse to do so.

But in a Case where a Bail-Bond be entered into, and the Defendant both not put in Bail, but the Bond is sued, and afterwards the Defendant in the Original Action dies.

In such a Case, if the Plaintiff had been delayed so long, as by the Course of the Court he might have tried his Cause in the Original Action, and recovered Judgment against him; if he had put in Bail at the Return of the Writ, and received a Declaration, the Court will not relieve the Bail upon the Bail-Bond, but they will be answerable to the Plaintiff's Demand. But this Matter is now made more easy by a Discretionary Power given to the Judges, by the Statute of 4 & 5 Anne.

A Bail-Bond is dated before the Return of the Writ, but not sealed until after the Return of the Writ.

The Plaintiff brings an Action upon this Bond. The Defendant pleads Oyer of the Condition, and pleads, That the Bond was *Primo deliberatum* the Day after the Return of the Writ.

*Absque hoc*, that it was delivered the Day it bears Date: This was held to be a void Bond.

A void Bond.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.

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A Bail-Bond dated before, but not sealed until after the Return of the Writ.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.

A Bail-Bond dated before, but not sealed until after the Return of the Writ.



in a good Plea, and Judgment was given for the Defendant.

*Where a Habeas Corpus or Certiorari is brought, and returned, and put in thereupon; if the Plaintiff declares, and recovers more than*

*Sum in the Plaintiff returned upon such Habeas Corpus or Certiorari, the Bail are not liable, but are absolutely discharged. If the Law should be otherwise, the Bail might be bound, they intending to be Bail only for the Sum mentioned in the Plaintiff returned, and no more; and this was adjudged on great Consideration. Mich. 35 Car. 2. Edwards against*

*Bail of Overton.*

*Where a Plaintiff is levied in Case in an Inferior Court, and this is returned into the King's Bench, and there is a Delegation in Case according to the*

*Writ; but afterwards it is agreed to waive the Action of the Case, and to give Judgment in Debt, and accordingly done. By this, the Bail are absolutely discharged. Because this is not the same Action to which the Bail*

*are bound. 6 W. & M.*

*becomes Bail for B. at the time of C. and C. recovers against B.*

*afterwards a Capias ad Satisfaciendum is issued out against B. and returned*

*est inventus, and filed; and afterwards B. dies before any Sci. fa'*

*issued out against A. Yet this will not excuse A. the Bail, because the Recognizance is broken, in that B. did not render his*

*body upon the Capias ad Satisfaciendum; and yet he might in his charge have brought in B. (if he had been living) before the*

*and Sci. fa' returned; but this*

*is contra Curie. See Cro. Jac. 165.*

*47. but it had been otherwise, if he had been dead before the Ca' Sa' returned and filed. See 1 Jones R. 29.*

*Cro. El. 597.*

*When brings a Writ of Error, and puts in Bail to prosecute it with*

*and sue out a Sci. fa' ad audiendum Errores, this is a Forfeiture of the Recognizance. 1 Rol.*

*29.*

*Bail upon an Habeas Corpus or Certiorari shall be liable for no more than is expressed in the Plaintiff, &c.*

*Where a Plaintiff is levied in Case, and Bail put in, and afterwards Judgment confessed in Debt, the Bail are discharged.*

*After a Capias ad Satisfaciendum return'd and filed, and before Sci. fa', the Principal dies, yet the Bail are liable.*

*Ex gratia Curie.*

*Aliter, if he had been Dead before a Ca' Sa' return'd and filed.*

*Recognizance forfeited for the not assigning Errors.*

What Persons, and for what Causes, Bailable.

When Bail is to be taken, and when not.

Where the Plaintiff in an *Audita Querela* may be bailed, and where not.

Where upon a *Capias* in *Wibernam*.

Who may take Bail for Appearance, and who must take it to the Action.

Must be taken in Court upon an *Audita Querela*.

How the Recognizance to be.

as he was before. *Dyer* 193. *Margine*.

The pleading of a Render of the Principal.

*Reddidit se custod' Mar' Marefc' in exoneratione Manuscripti suoi; Et per eandem Cur' Commissus fuit, &c.* 3 Bult. 192.

Must conclude *Prout patet per Recordum*.

to be tried *per Pais*, but *per Recordum*. Hob. 210. Latch. Mo. 888. Pl. 1249.

What Persons may be bailed, and for what Criminal Causes. See *Dyer* Abr. 677, 678, 679, 680, 681, 682.

Bail is taken only when the Matter Stat *indifferenter*, and not when the Offence is open and manifest.

*2 Inst.* 189. If an *Audita Querela* be found upon a Deed or Record, the Plaintiff may be bailed; but if upon Surmise of a Matter of Fact only, he cannot. *1 Rol. R.* 132.

Where the Defendant, taken upon a *Capias* in *Wibernam*, shall be bailed after an *Elongatus* return'd. See *T. Homine Replegiando*.

Bail for Appearance only may be taken by a Sergeant at Mace, but Bail to the Action must be before a Judge of the Court. *Cro. Jac.* 94.

Bail taken upon an *Audita Querela*, where the Plaintiff is in Execution, must be taken in open Court, *1 B.* 140. and the Recognizance must be rendered his Body to be imprisoned.

*140. and the Recognizance must be rendered his Body to be imprisoned.*

In the pleading of a Render of the Principal, the Bail must say, *venit hic in Curia, Et in eadem Curia*.

*Reddidit se custod' Mar' Marefc' in exoneratione Manuscripti suoi; Et per eandem Cur' Commissus fuit, &c.* 3 Bult. 192.

In pleading of a Render, the Defendant must conclude his Plea, *ut patet per Recordum*; for this is

to be tried *per Pais*, but *per Recordum*. Hob. 210. Latch. Mo. 888. Pl. 1249.

# Burglary

See First Part 119.

Burglary, by the Common Law, is where a Man in the Night breaketh and entreteth into the House of another, to the Intent to commit some Felony within the House, whether the Felonious Intent be executed or not.

What Burglary is.

By a Statute made 10 & 11 Will. III. cap. 23. It is enacted, That every Person, who shall, by Night or Day, in any Shop, Ware-house, Coach-house, or Stable, feloniously

What shall be Burglary, by the Statute of 10 & 11 Will. 3. cap. 23.

steal any Goods of the Value of 5 s. or more, although such Shop, Ware-house, Coach-house, or Stable, be actually broken open by such Offender, and although there be no Person in such Shop, Ware-house, Coach-house, or Stable (to be in Fear); or shall Assist, Hire, or Command, any Person to commit such Offence; being thereof convicted or attainted,

Goods of 5 s. Value, or more, out of a Shop, Ware-house, Coach-house, or Stable, though not actually broke open.

shall be absolutely debarred, and excluded from the Benefit of the Clergy.

Shall be debarred of Clergy.

See the Statute, 3 & 4 W. & M. ruled, An Act to take away Clergy from some Offenders, and to bring others to Punishment.

Stat. 3 & 4 W. & M.

Barretery, See Common Barretery.

M

Bank



# Bankrupt.

First Part 119.  
 Bankrupt, See Commission.  
 Property.

A Bankrupt, what.

1 Jac. 1. cap. 15.

**A** Bankrupt is thus described  
 1 Jac. 1. cap. 15. viz. All  
 every Person who shall use the  
 Trade of Merchandise, by Way  
 Bargaining, Exchange, Barter  
 or otherwise in Groats, or by seeking of his or her Living  
 by Buying and Selling, and being a Subject born of the  
 Realm, or any of the King's Dominions, or a Merchant  
 who shall depart his House, or absent himself, or suffer  
 himself to be arrested for any Debt or other Thing  
 growing due; for Money delivered, Wares sold, or other  
 good Considerations; or shall suffer himself to be outlawed  
 or go to Prison; or fraudulently procure himself to be ar-  
 rested, or his Money or Goods to be attached; or depart from  
 his Dwelling-House; or make any fraudulent Conveyances  
 of his Lands, Goods or Chattels, whereby his Creditors,  
 being Subjects born, may be defeated in the Recovery  
 of their just and true Debt; or being arrested for  
 Debt, shall lie in Prison Six Months or more upon  
 such Arrest or Determination, shall be accounted and  
 judged a Bankrupt.

Exposition of the Stat.  
 13 El. cap. 7. of Bank-  
 ruptcy.

Innkeeper cannot be a  
 Bankrupt.

Who shall, and who shall not. See Danv. 686, 687.

An Exposition of the 13 Eliz.  
 7. of Bankruptcy. See the whole  
 2 Rep. 25, 26.

An Innkeeper, Quatenus an In-  
 per, cannot be a Bankrupt. 3  
 309, 310. Nor a Farmer, nor a  
 ler, &c. Show. Rep. 269, 270.

The Court will not compel Commissioners of Bankruptcy to give the Witness a Copy of the Interrogatories, or of his Depositions, though the Man swears he was Illiterate, and could not tell whether they wrote his Depositions right, or no. *Hill. 8 W.*

The Commissioners are not to give a Witness a Copy of the Interrogatories, or of his Depositions, though he swears that he was Illiterate, &c.

Where Commissioners of Bankruptcy procure an Evidence to be arrested, and bring him in Custody to be examined by them; this is a Misdemeanor, for which an Information will lie, where the Arrest is by Process issuing out of any other Court than the *King's-Bench*. But if the Arrest were in the *King's-Bench*, then this Court will not an Attachment against the Commissioners. *Hill. 3 W.*

Commissioners must not bring Evidence in to be examined before them by an Arrest, it is a Misdemeanor.

Where it is said, that the Bankrupt's Goods are bound by the Teste of the Writ; that is, where the Writ is sued out the same Day that it bears Teste, but not if sued out afterwards: *Because if it should be otherwise, all Sales between the Teste and Return would be avoided.* *Law. 174.*

Where Bankrupt's Goods are bound by the Teste of the Writ.

Where Commissioners assign over Debt (for the Purpose) of 100 l. due on 3 s. Though this is a Debt due on a Judgment, yet this Assignment is sufficient. *Mich. 8 W. B. R.*

*Because if it should be otherwise, all Sales between the Teste and Return would be avoided.*

How Debts shall be assigned.

Where Commissioners commit a Man to Prison for not making of a Discovery of his Estate upon Oath, without exhibiting of Interrogatories. This Commitment is illegal, for that they have not pursued the Direction given by the Statute, which is to draw up Interrogatories, and examine him thereupon; and if he shall then refuse to answer them, he may be committed: But because a Man was committed, no Interrogatories being offered to him, he was upon *Habeas Corpus* discharged by the Court of *King's-Bench*. *Mich. 9 W. B. R.*

by general Words shall

No Man bound to make a Discovery upon Oath of his Estate, until Interrogatories are exhibited against him.

Executor arrests a Man before Probate, but it is proved before the Return of the Writ.

it was not this Arrest, but some other subsequent Matter which could make the Defendant a Bankrupt, for the Plaintiff had no any Cause of Action against the Defendant at the Time of the Arrest. *Mich. 34 Ca. 2.*

Two Partners, one is a Bankrupt, the Assignee shall have but his Moiety.

One committed for not answering Interrogatories, until he shall be delivered by due Course of Law, is naught: It should have been, until he shall answer the Interrogatories.

and for that Reason the Party was discharged. 8 W. B. R.

Assumpsit lies not for Assignees for the Money for which the Bankrupt's Goods were sold, but Trover.

A Bankrupt may recover in his own Name, until assigned over to Assignees.

Commissioners cannot, after Assignment, bring in the Person who claims the Goods to swear.

the Assignment they have

Stat. 4 & 5 Annæ, what Alterations are made as to Bankrupts.

An Executor arrests a Man before Probate of the Will, but he proves before the Return of the Writ, afterwards the Defendant becomes a Bankrupt. And it was adjudged, That

Two Partners in Trade, and one of them becomes a Bankrupt, the Assignee shall have no more than a Moiety jointly with the other Partner.

A Man was committed by Commissioners of Bankruptcy, for not answering of Interrogatories; and the Commitment was, until he shall be discharged by due Course of Law. This was held a void Commitment. For that it should have been, until he should have answered the Interrogatories.

Assumpsit lies not for Assignees Commissioners of Bankruptcy, for Money for which the Bankrupt's Goods were sold, but only Trover for Goods. 3 Lev. 192.

A Bankrupt may bring an Action in his own Name and recover, until the Matter for which he brings Action is assigned over by the Commissioners to the Assignees. 13 Eliz. 701.

Commissioners of Bankruptcy cannot, after an Assignment of Goods to the Assignees, bring in the Person who claims the Goods, to swear whether they are his Goods or no: Because they executed their Authority.

What Alterations are now made as to Bankrupts. See the Stat. 4 & 5 Annæ, entituled, An Act to prevent Frauds frequently committed by Bankrupts.



Where a Man is indebted 100 l. more, and he pays it not, nor compounds for it, within Six Months after it becomes due, and the Debtor be arrested for the same, or being arrested for Debt, is in Prison Two Months upon that or other Arrest for Debt, or being arrested for 100 l. or more, escapes out of Prison, or is enlarged by putting in of Common or Hired Bail, shall be adjudged a Bankrupt from his first Arrest. 21 Jac. cap. 19.

Also by the same Statute, sect. 14. Purchaser shall be impeached, unless the Commission be sued forth within Five Years after he becomes a Bankrupt.

No Debtor shall be prejudiced by payment of his Debt to any Bankrupt, before that he hath Notice that he is so. 1 Jac. I. cap. 15. sect. 14.

The Commissioners may examine a Bankrupt upon Interrogatories, and commit him to Prison if he refuses to be sworn, until he shall submit and be examined. 1 Jac. I. cap. 15.

The Wife of a Bankrupt shall be examined against her Husband, and if not coming, or refusing to be examined, shall be committed. Ib.

How the Commissioners shall proceed against the Person of a Bankrupt. 13 Eliz. cap. 7. sect. 9. 1 Jac. I. cap. 15. 21 Jac. cap. 19. sect. 7. *Daro.*

Money of a Bankrupt upon execution in the Sheriff's Hands, being in Custodia Legis, cannot be disposed of by the Commissioners, but the Bankrupt shall have it, no Body can acknowledge Satisfaction but him. Cro. Car. 176. 148.

Commissioners may sell Goods without Deed inrolled, but Lands cannot, 2 Co. 26. a. 1 Vent. 360.

What shall make a Man a Bankrupt.

21 Jac. cap. 19. par. 2.

When the Commission to be sued out to affect a Purchaser.

21 Jac. cap. 19. sect. 14.

Payment to a Bankrupt before Notice, is good.

1 Jac. I. cap. 15. sect. 14.

May commit upon Refusal to answer Interrogatories.

1 Jac. I. cap. 15.

The Bankrupt's Wife shall be sworn.

How to proceed against the Person of a Bankrupt.

13 Eliz. cap. 7. sect. 9.

1 Jac. I. cap. 15.

21 Jac. cap. 19. sect. 7.

Money in Execution belongs to the Bankrupt.

Bankrupt shall have it, no Body can acknowledge Satisfaction but him. Cro. Car.

Commissioners may sell Goods without Deed inrolled, but Lands cannot.

May sell Goods without Deed inrolled, but not Lands.

To what Conveyances of his Lands it shall extend.

13 Eliz. cap. 7.

Where there are fraudulent Grants or Conveyances.

21 Jac. cap. 19.

Shall bind all Estates Tail.

21 Jac. cap. 19. sect. 12.

How to make Distribution.

13 Eliz. cap. 7. sect. 2.

Commissioners shall account to the Bankrupt, and pay him the Overplus.

When Creditors may come in.

1 Jac. cap. 15. sect. 4.

A Creditor who came not into the First, may come into the Second Distribution.

## Bankrupts.

The Act for Sale of his Lands shall not extend to Lands, bona fide conveyed by him before his Bankruptcy, and not to the Use of himself or his Heirs, or such who were consenting to this fraudulent Purpose. 13 Eliz. cap. 7.

Where a Conveyance is made to his Children or others, or he transfers his Debts in other Mens Names except upon the Marriage of a Child (both Parties being of Age); or for some valuable Consideration, the Commissioners may sell. 21 Jac. cap. 19.

They may sell all Entailed Lands in Possession, Reversion or Remainder, (except entailed in the Crown or the Gift of the King); and this shall bind the Issue in Tail, and all others which a common Recovery might cut off. 21 Jac. cap. 19. sect. 12.

The Commissioners are to sell, or otherwise order the Bankrupt's Lands &c. for Payment of Creditors, to every one his Rateable Part, according to the Quantity of his Debt. 13 Eliz. cap. 7. sect. 2.

The Commissioners shall, upon the Bankrupt's Request, declare how they have bestowed his Lands, and render the Overplus to the Bankrupt. Ibid. sect. 4.

A Creditor within Four Months or before Distribution, may come to the Statute. 1 Jac. cap. 15. sect. 4. Note, Distribution cannot be till after Four Months.

After a First Distribution, no Creditor can come in to disturb it, but may come in for the Residue, where no Distribution was made. 2 Chanc. R. 154.

A Bankrupt dies after a Commission dealt in by the Commissioners, and before Distribution, the Commissioners may proceed, as if living. *Fac. cap. 15. sect. 18.* And if the Bankrupt dies, and after the King dies, a new Commission may be granted, and they may proceed upon the New Commission, where the Old left off. *Chanc.* 193, 194.

Where the Bankrupt dies.

Where the King dies.

Where Commissioners may plead the general Issue, and what those acting under them must plead. *Vide* *am.* 694.

What may be pleaded.

**Bond, See } Obligation.  
Bail-Bond.**

**M 4**

**Breach.**



# Breach.

Breach, See

First Part 120.  
Assignment.  
Covenant.  
Debt.  
Replication,

Breach, Quid.

**B**reach, is where a Man com-  
mits a Breach of a Condition  
of a Bond, or of his Covenant,  
the not performing of them; and upon an Action brought  
thereupon, the Breach must be assigned.

How to assign a Breach  
before the Stat. 8 & 9 W.  
cap. 10.

Breach, you must assign but one Breach, and no more; for if you  
assign more, it was then held to be double, One Breach being  
much a Forfeiture of the Penalty in Law, as Twenty: But  
an Action of Covenant, you may assign as many Breaches  
you please. But see for this, the Alteration made by the  
Statute of 8 & 9 W. cap. 10. set out at large in the Title Coven-  
nant. Vide Postea in the next Paragraph, where you may  
sign as many Breaches as you please.

How since that Statute.

What Breaches may be  
assigned upon a Bond for  
Performance of Covenants.

What Damages the  
Jury may assess.

8 & 9 W. 3. ca. 10. sect. 8.

Formerly, if there were Twenty  
several Things in the Condition of  
Bond, and every one of them was  
broken, yet when you come to assign

Where an Action shall be brought  
upon a Bond for Performance of Covenants, the Plaintiff may assign as many  
Breaches as he pleases; and the Jury  
may assess, not only Damages and  
Costs, but Damages for such Breaches  
so to be assigned, as the Plaintiff upon  
Tryal shall prove to have been  
broken. 8 & 9 W. 3. ca. 10. sect. 8.

Also, if Judgment shall be had by  
 murmur, Confession, or *Nil Dicit*,  
 Plaintiff may suggest upon the

A Writ to enquire of the  
 Breaches.

as many Breaches as he shall think fit; upon which shall  
 a Writ of Enquiry for a Jury to appear before the Justices  
 Assize of the County, to enquire of the Truth of every one  
 those Breaches, and to assess Damages that the Plaintiff  
 hath sustained thereby. *Ibid.*

Also, that the Defendant paying of  
 Damages and Costs, there shall  
 a Stay of Execution on the said  
 Judgment: But such Judgment shall  
 main to answer any further Breach,  
 it may be sustained, on which the  
 Plaintiff may have a *Sci. Facias* against  
 Defendant. *Vide Stat. 8 & 9 W.*

What shall be a Satisfac-  
 tion of the present Dam-  
 ages.

But Judgment shall stand,  
 For the future Disability to  
 perform, is a Breach of  
 Covenant.

8 & 9 W. 3. cap. 10.

Where a Man by his own Act disables himself to perform  
 a Breach of Covenant. 5 Rep. 21. a.

It is not a sufficient Breach to say,  
*Non habens legale Titulum*; enter'd,  
 without saying what Title. 1 Lev.

Mod. 101. 1 Mod. 292. agrees with *Levins*.

Breach of Covenant as generally  
 the Words of the Covenant are, is

3 Lev. 170.

The Plaintiff sets forth, That the  
 Defendant agreed to sell him a sixth  
 of a Ship for 500 l. and that the  
 Plaintiff should pay 20 l. in Hand, and

Residue upon executing of the Writing; and that, in Con-

sideration that the Plaintiff had paid the 20 l. and promised to

perform the Agreement on his Part, the Defendant promised to

perform it on his; then he says, That the Defendant hath not

performed it on his Part. This being a mutual Promise, the

breach is well assigned in the general Words. 3 Lev. 319.

assigned the rather because after a Verdict.

What is a sufficient  
 Breach.

Breach may be assigned  
 as generally as the Cove-  
 nant it self.

How to assign a Breach  
 upon a mutual Promise.

Bailiff.

A Writ to enquire of the Breach.

Writ of Habeas Corpus for a Party to appear before the Justices of the County to enquire of the Truth of every one of the Breaches, and that the Plaintiff

# Bailiff.

What shall be a Bailiff of the Prisoner's Damages.

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What shall be a Bailiff of the Prisoner's Damages.

First Part 121.  
Abowry.  
Corporation.  
Sheriff.

**O**f Bailiffs, there are Three Sort, viz. Bailiffs of Liberties, Sheriffs Bailiffs, and Bailiffs of Towns and Villages: Bailiffs of Liberties, are those Bailiffs who are to execute the Sheriff's Warrants within their Liberty: Sheriffs Bailiffs, are those who are quasi Servants to the Sheriff, to execute their Warrants: Bailiffs of Towns and Villages, are to collect their Rents, and levy their Fines and Mercenaries.

No Warrant of Attorney, for a Judgment to be taken of a Party under an Arrest, unless an Attorney be present at the sealing of it, is void, and the Party is severely punished. *Paf. 15 Ca. 2. R.*

**Note.** That it was held that a Warrant to confess a Judgment taken from a Man under an Arrest, in the Presence of an Attorney's Clerk or Solicitor, was void. *Paf. 5 W. & M.*

Where a Return of a Rescue out of the Custody of a Sheriff's Bailiff, is good.

The Bailiff shall be excused upon serving of an Execution, where the Plaintiff shall not.

No Bailiff or Sheriff's Officer shall presume to exact or take from any Person, being in his Custody by Arrest, any Warrant to acknowledge Judgment, but in the Presence of an Attorney, who then shall subscribe his Name thereto, upon Pain of being

A Rescue returned extra Curiam of a Sheriff's Bailiff, is good, without saying, out of the Sheriff's Custody. *1 Lev. 214. 2 Lev. 26.*

If a Man become a Bankrupt, afterwards his Goods are taken in Execution upon a Judgment, and then a Statute is taken out, and he is declared a Bankrupt, and the Goods assigned, Though the Assignees may



for the Goods against the Plaintiff in the Judgment, yet he  
not have any Action against the Bailiff. *Show, Rep. 12.*

What a Bailiff may do, who takes  
Goods in Execution and keeps them,  
whether he shall be allowed any more  
it than the Execution-Money.

What a Bailiff, who takes  
Goods in Execution, may  
do,

*1446.*

A Bond taken by the Bailiff of  
Westminster, to indemnifie him upon  
Execution against Goods, and good.

*596.*

A Bail-Bond taken to a Bailiff  
a Corporation, and not to the King,  
appear at the Corporation Sessions,  
and good. *Lutw. 501.*

A Bailiff pleads Property in a  
Stranger in Replevin, and good.  
*Lev. 90.*

A Bailiff may make a Conuizance  
under a Corporation, without Writ-  
ing, in an Avowry for Damage  
Feazant. *3 Lev.*

But in an Assize, the Bailiff must  
have a Warrant under the Common  
Seal of the Corporation. *1 Plow. 91.*

Where a Man takes Cattel with-  
out any Command, for Services due  
to the Lord; if the Lord afterwards  
consents the taking, he shall be ad-  
judged as Bailiff, although he was not his Bailiff. *7 H. 4.*

A Bailiff of a Manor cannot di-  
stain for an Amercement, without a  
Special Warrant from the Steward.  
*El. 698, 748.*

A Bailiff may license one to go o-  
ver the Land, for this is a Trespass  
in the Possession only, and the Bailiff  
has the Disposal of the Profits of the  
Possession. *Cro. Jac. 337.*

A Bailiff may himself, or may com-  
mand another to take Cattel Dam-  
age Feazant upon the Land, for he  
has the Care of all Things within  
the Manor. *Dart. 685, N° 4.*

A Bond taken by the  
Bailiff of Westminster, to  
indemnifie him upon an  
Execution of Goods.

Bail-Bond to a Bailiff of  
a Corporation, to appear  
at the Corporation Ses-  
sions, and good.

Bailiff pleads Property  
in a Stranger.

How a Bailiff may make  
Conuizance to a Corpora-  
tion, sans Writing, for  
Damage Feazant.

~~Not in an Assize.~~

What Act shall make a  
Man a Bailiff.

Cannot distrain for an  
Amercement, without a  
Warrant from the Steward,

A Bailiff may license  
one to go over the Land,  
and why.

May distrain Damage  
Feazant: He hath the Care  
of the whole Manor.

**Bailiff.**

Amends for Trespas,  
cannot be render'd to a  
Bailiff upon a Distress.

If a Distress be taken Dam-  
Feazant, Amends cannot be render'd  
to a Bailiff, for he cannot deliver the  
Distress when once taken, nor demand

Rent upon a Condition of Re-entry, 5 R. 76.

**Bailiff and Receiver, See Wills.**

By the  
Bailiff of a Manor, to  
indemnify him upon the  
Execution of Goods.

to indemnify him upon  
Execution against Goods and Goods.

Bailiff and to a Bailiff of  
a Corporation, to appear  
at the Corporation set-  
tles, and Goods.

to a Bailiff taken to a Bailiff  
a Corporation, and not to the King,  
at the Corporation set-  
tles, and Goods.

Bailiff pleads Property  
in a Stranger.

Bailiff pleads Property in a  
Stranger, and Goods.

How a Bailiff may make  
a Corporation, without  
Writ, and Writ, for  
Damages, and Goods.

How a Bailiff may make a Corporation,  
without Writ, and Writ, for  
Damages, and Goods.

Not to be made

in an Office, the Bailiff must  
be a Warrant under the Common

What a Bailiff may make a  
Man a Bailiff.

What a Bailiff may make a  
Man a Bailiff, for services due  
the Lord, if the Lord wills.

7 H. 4.

although he was not his Bailiff

Cannot sustain for an  
Amendment, without a  
Warrant from the Sheriff.

of a Manor cannot be  
for an Amendment, without a  
Warrant from the Sheriff.

A Bailiff may license  
one to go over the Land,  
and why.

A Bailiff may license one to go  
over the Land, for this is a  
Bailiff only, and the Bailiff  
of the Lord of the Manor.

May sustain Damages  
for the whole Manor.

may sustain Damages  
for the whole Manor.

**Bargain**

# Bargain and Sale,

Bargain and Sale, See

1st Part 122.  
Inrolment.  
Uses.

**Bargain and Sale**, is where a Recompence is given by both Parties to the Bargain: As if he bargains and sells his Land to another for Money; the Land is a Recompence to him for the Money, and the Money is a Recompence to the other for the Land.

There must be a good Consideration of Money to raise an Use by Deed of Bargain and Sale inrolled, which Inrolment must be within Six Months.

Deeds of Bargain and Sale inrolled, were ordered and directed by 27 H. 8. ca. 16.

A Bargain and Sale made by one who is not in Possession, nor receives the Rents, tho' it be by Deed inrolled in Consideration of Money,

is not good, if there be no Livery thereupon. *Mich. 23 Car. 2.* If there be Livery, it passeth, for the making of the Livery the Bargainee into Possession; so likewise if the Bargainor enters and takes Possession, and then seals and delivers the Deed upon the Land: But if the Bargainor be in Possession, or receives the Rents, then the Estate will well pass by Deed inrolled, without Livery.

A Bargain and Sale made off the Land, is not sufficient to make a Claim, and then pass a Remainder.

Rep 54. a.

An Estate doth not pass by a Deed of Bargain and Sale, it is only an Use. See Title Uses.

**Bargain and Sale, Quid.**

What makes a good Deed of Bargain and Sale.

Ordered by 27 H. 8. c. 16.

Where a Bargain and Sale must be executed upon Land, tho' inrolled.

Bargain and Sale off from the Land, how to Enure.

What passes by a Bargain and Sale.

Where



How a Bargain and Sale, in Consideration of Natural Affection, shall operate.

A Grant for Money, and Natural Affection, how to operate.

How to be pleaded.

Where the Deed must be inrolled, and where not.

When it will pass without Inrolment. *Stiles 204. 1 Lev. per Twisden.* And a Diversity taken, where Natural Affection is Part of the express Consideration, and where not.

A Bargain and Sale, and before Inrolment a Fine is levied, shall pass by the Fine.

The Question was, Whether it should take Effect by the Deed or Fine, or Feoffment? If by the Deed, there needed no Attornment of the Lessee; If by the Fine or Feoffment, the Lessee must Attorn: Adjudged, that he shall take by the Fine or Feoffment, which are Common Law Conveyances, and the Deed shall be preferred. *Hinde's Case. 4 Rep. 70. b. 71. a. b.*

The Bargainee hath such a Possession, that he may Surrender, Attorn, Release, &c. But not to bring Trespass sans actual Entry.

Entry, or the Deed sealed upon the Land. *Carter's R. 66.*

Where a Bargain and Sale is well executed:

And where not, where the Bargainor is in Possession.

Law, and the End of the Law is to settle Peace and quiet Possession: But if he had entered and delivered the Deed upon the Ground, or made a Letter of Attorney for the doing thereof,

Where the Words Bargain and Sell, without mentioning any Money, in Consideration of Natural Affection, shall operate as a Covenant to stand seized. 2 Lev. 9. 10.

A Grant of a Rent for Money, and Natural Affection, how to operate, whether as a Bargain and Sale if inrolled, or as a Covenant to stand seized if duly pleaded, and how to be pleaded. 2 Lev. 292.

If Lands are passed for Money only, the Deed ought to be inrolled, but if for Money and Natural Affection,

A Bargain and Sale is made with a Reversion, and before the Inrolment a Fine is levied, or a Feoffment made by the Bargainor to the Bargainee, then the Deed is inrolled.

If a Man bargains and sells Land whereof he is seized: The Bargainor hath presently such a Possession, that he may Surrender, Attorn, Release, &c. but he cannot upon this Possession bring Trespass without an actual Entry.

If one bargains and sells Land of which another is in Possession, he claims Title to them: This Bargain and Sale is not good; because it is a litigious Title, the buying whereof the Law doth not allow, for it would be a Means to nourish Suits.

## Bargain and Sale,

175

upon the Ground, which was accordingly done ; then if the Bargainor had a good Title, the Deed is well executed.

**A Bargain and Sale for Money** the Premises, *Habund.* after the death of the Bargainor, and inrolled within six Months, shall pass a present Estate in the Grant, and the *Habundum* shall be void. 3 *Lev.* 339.

**A Bargain and Sale of a Term** granted by him who was seised of the inheritance, is good, without Attornment. *Heyward's Case*, 2 *Rep.* 36. If the Bargain and Sale was made to an Assignee of a Lessee formerly, there must be an Attornment :

because this is not executed by the Statute of Uses, which executes only where the Grantor is seized, not possess'd : But Attornment is now supplied by a late Statute made 4 & 5 *Annæ* ; which is in Title Attornment.

**Tenant in Tail by Deed** grants his Estate which he hath in the Land, *Habund.* all his Estate to the Grantee and his Heirs for ever, and gives Seisin accordingly, the Grantee hath but an Estate for

Term of the Life of the Tenant in Tail : This Bargain and Sale is a rightful Estate, and discontinues neither the Entail, or any Remainder. *Lit. Sect.* 613. Note, It is Grants all the Estate : But if he had enfeoff'd him of the Land, that had made a Discontinuance. *Lit. Sect.* 595. So note a Difference, where it is a Grant of his Estate, and where it is a Feoffment of his Land : For his Estate that he could grant, was only for his own Life ; but if he had taken upon him to make a Feoffment of the Land, there it would have been a Discontinuance : Because he did more than by Law he could do.

The Statute of Inrolments says, that a Deed of Bargain and Sale shall not vest, unless it be inrolled ; and when it is inrolled, the Estate vests not by the Statute of Inrolments, but by the Statute of Uses presently. *Hob.* 136. *Cra.* 408.

Where the Bargain and Sale shall pass by the Premises, and the *Habendum* in future shall be void.

A Bargain and Sale of a Term, made by him who was seised of the Inheritance, is good, sans Attornment : But if made by an Assignee of a Lessee, it is not.

4 & 5 *Annæ.*

Of Grants, and Bargains and Sales, made by Tenants in Tail.

When a Discontinuance, and when not.

When and how a Deed of Bargain and Sale shall vest.

27 *H.* 8. ca. 16.

*Hob.* 136. *Cra.*

If only one acknowledge the Deed, it is good.

Inrolment within the Statute. *Seales 462.*

May suffer a Recovery before Inrolment.

So also where he levies a Fine.

The Deed inrolled after the Bargainee's Death, and good.

A Lease before Inrolment, not good.

How to plead a Bargain and Sale.

Must say, that it was inrolled *infra sex Menses.*

If several seal the Deed, and one acknowledge it, and thereupon the Deed is inrolled; this is a good

The Bargainee before Inrolment may suffer a Remedy; and this is warranted by the common Practice. *1 Ventr. 361.*

So where he levies a Fine before Inrolment, and afterwards it is inrolled, and good. *4 Leon. 4.*

The Deed is inrolled within six Months, but it was after the Bargainee's Death; yet it is good, and shall *ab initio* by the Statute of *Uses*, 13.

But a Lease made by the Bargainee before Inrolment, held not to be good. *Cro. Car. 110.* But see *1 Ventr. 360, 361.*

In pleading of a Bargain and Sale you must say where it was inrolled. *Cro. Jac. 291.*

Also you must say, That it was inrolled within six Months; for *de modo secundum formam Statuti.* will do. *Allen 19.*



# Battery.

Battery, See { 1st Part 124.  
Trespas,  
Justification.  
De son Tort.

Battery, is a Trespas committed by one Man upon another, Vi & Armis, & contra Pacem, &c.

Battery, Quid.

To lay Hands gently upon another (not in Anger or Passion) is no Battery to ground an Action of Trespas and Assault upon; for the Law will not presume the Battery is thereby dammed.

What is a Battery, and what not.

Battery brought by Husband and Wife for beating of the Wife, and taking of the Husband's Goods, is naught: Because it ought to have been brought by the Husband only for the Goods, 1 Lev. 3.

Baron and Feme bring Battery for beating of the Wife, and taking of the Husband's Goods, is naught.

In Battery, the Defendant justifies *mollior manus imposuit*, to arrest the Plaintiff, whether good or not. 3 Lev. 404.

Justification for *mollior manus imposuit*, to arrest the Plaintiff, whether good or no.

Barretor, See Common Barretor.

N

Bastard.

# Bastard.

## See Marriage.

**Bastard, Quid.** **B**astard, is one born of any man not married, so that his Father is not known by the Order of the Law, and therefore he is called *Filius Populi*.

**Mulier, Quid.** By the Law of the Roman Church, if a Man get a Woman with Child, which Child is born and afterwards he marries her, such Child shall be taken to be Mulier, and not Bastard.

**The Question of Bastardy or Legitimation ought to be first moved in the Temporal Courts, and Issue ought to be thereupon joined, and then to be transmitted to the Ecclesiastical Court by the King's Writ, to be examined and tried there; and thereupon the Bishop shall make his Certificate to the King's Court, which being duly made, the Law gives entire Credit to it.** *Deo. R. 52. a.*

**The Manner of the Tryal.** When Issue is joined upon Bastardy, before it shall be awarded to the Ordinary to be tried, Proclamation shall be made thereof in the same Court; and afterwards the Issue shall be certified into Chancery, where Proclamation shall be made once a Month for Three Months; and afterwards the Chancellor shall certify this to the Court where the Plea is depending; and after it shall be proclaimed again in the same Court.

**Certificate into Chancery, and three Proclamations.** That all those whom this Plea doth concern, should go to the Ordinary to make their Allegations. 9 H. 6. ca. 11.

**The Words of the Proclamation.**

9 H. 6. ca. 11.

It may be tried by the Bishop's Certificate, as well in any Personal Action as in any Real Action, or Writ Affize. *Daro. 732.*

If a Man be certified to be a Bastard, this shall not bind before Judgment in an Action between him and the other. 18 E. 3. 34. Neither doth it bind if the Plaintiff be after non-suited. *Ibid.*

If a Woman be with Child by A. and afterwards marries her, and then Child is born: This is a *Mulier*, and not a *Bastard*.

If A. hath Issue by B. and afterwards they marry; the Issue is a *Bastard* by our Law, but a *Mulier* by the Civil Law. 47 Ed. 3. 14. b. 5 Co. 416, 417.

A Man who hath a Wife, marries another, and hath Issue by her: This is a *Bastard*, for the Second Marriage is void. Co. 7. R. 44.

Where a Sentence of Divorce is given in the Spiritual Court, the parties shall be perpetually bound so long as it stands in force, and they shall not at Common Law be admitted to make any Proof to the contrary. 8 Co. R. 43. R. 289. Cro. Jac. 462.

A Divorce *Causa Precontractus*, *Causa Consanguinitatis*, *Causa Frigiditatis*, bastardizes the Issue. 47 E. 3. 78. Co. Lit. 235. a. But a Divorce *Causa Adulterii* doth not: That is not a *Vinculo Matrimonii*, but only a *Mensa & Thoro*. 1 Rol. Abr. 341. Pl. 20.

If Baron and Feme continue Bastard and Feme all their Lives, the Issue cannot be a *Bastard* after their Death. 7 Co. R. 44. Fenk. R. 268.

A Woman hath Issue Forty Weeks and Eight Days after her Husband's Death, the Issue shall be legitimate; for it may be so by the Law, and the Law hath not ap-

In what Actions it may be tried.

Certificate of Bastardy binds not till Judgment:

Nor when the Plaintiff is nonsuited.

What is a *Mulier*?

*Bastard* by the Common Law, and *Mulier* by the Civil Law.

A married Man takes another Wife, the Issue by her are *Bastards*.

The Issue are bound by a Sentence of Divorce.

What Divorces bastardizes the Issue, and what not.

is not a *Vinculo Matrimonii*. 1 Rol. Abr. 341. Pl. 20.

Divorce to bastardize the Issue, must be in the Life of Baron and Feme.

Issue Forty Weeks and Eight Days after Husband's Death, and Legitimate.



pointed any certain Time for the Birth of Legitimate Issue  
*M. 17 Jac. B. R. See Cro. Fac. 541.*

Of the Writ *de Ventre  
 inspiciendo.*

For the Writ *de Ventre inspiciendo*, and Proceedings therein. See Reg.  
 227. 4. Co. Litt. 8. b. Cro. El. 366.  
 Cro. Fac. 686. Winch. 71.

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# Bailment.

**Bailment**, is a Delivery of a Thing to another, sometimes to be delivered back to the Bailor, sometimes to the Use of the Bailee, and sometimes to a Third Person; and this Delivery is called a Bailment.

## Bailment, *Quid*.

A Bailiff, Factor or Guardian, is robb'd, they shall be discharged in their Account.

If a Bailiff of a Manor, or Factor, or such-like Accountant, be robb'd without his Default or Negligence, he shall be discharged thereof upon his Account: So also in Case of a Guardian. *Co. Lit.*

But if a Carrier be robb'd, he hath his Hire, and therefore implicitly undertakes the safe Delivery of the Goods. *Ibid.*

Otherwise of a Carrier, and why.

So if Goods be delivered to a Man to be safely kept, and they are stol'n: This shall not excuse him, because by the Acceptance, he undertook to keep them safely, and must do it at his Peril. *Ibid.*

Where Goods are delivered to a Man to keep, how he must keep them.

If Goods are delivered to one to be kept, or safely kept, is all one in Law: But if they are delivered to be kept as he will keep his own; there they are stol'n, without his Default or Negligence, he shall be excused. *Ibid.*

To be kept, or safely kept, is all one.

If pawned Goods are stol'n, he shall be discharged, because he had a Property in them, and therefore ought to keep them no otherwise than his own. *Ibid.* But if the Pawnor

Where a Man takes them to keep as he doth his own.

tendered the Money before the Stealing, and the other refused to deliver them, there he shall be charged. *Ibid.*

Where the Party to whom Goods are pawned shall be charged.

Where they are stol'n, and where not.

## Basement.

So if a Chest lock'd up  
is left, and the Key taken  
away.

not be charged with it,  
trusted with them, and

So also in case of inevi-  
table Accidents.

In what manner Goods  
ought to be received.

be kept as his own, or at

Lies not for an Horse  
stol'n at Grass, unless up-  
on a special Undertaking.

keep or redeliver him safe, Mo. 543. Pl. 720.

If I leave a Chest with C. to be  
kept, and take away the Key, and do  
not tell C. what is in it, and the Chest  
with what was in it are stol'n, C. shall  
not be charged with it, *Co. Lit. 89. a. b.* because C. was not  
what is said as to Stealing, is to be un-  
derstood also in case of Shipwreck,  
Thunder, Lightning, or other inevi-  
table Accidents. *Ibid.*

Note, It is necessary for him who  
receives Goods to keep, to receive  
them in a special manner, viz. T.  
the Peril of the Owner. *Co. Lit. 89. a.*

If A. agifts the Horse of B. for a  
Week, and he is stol'n, B. shall not  
have an Action against A. for it, un-  
less A. make a special Promise to  
keep or redeliver him safe, *Mo. 543. Pl. 720.*



# Bill of Exchange.

## See First Part 124.

A Bill of Exchange is made to A. who endorses it to B. who endorses it to C. and it is protested Non-payment; B. may, notwithstanding his Endorsement, bring an Action upon this Bill. *R. 163.*

In what Case a Protest may be made upon a Copy of a Bill of Exchange. *Ibid.*

The Drawer of a Bill of Exchange liable, altho' the Bill is not presented in Time. *Shaw. Rep. 319.*

Assumpsit upon a Bill of Exchange, payable to the Bearer, the Custom is too general, and naughr. 3 *Le. 299.*

By the Statute 9 & 10 W. 3. c. 17. is Enacted, That from and after the 1<sup>st</sup> of June 1693. all Bills of Exchange drawn in, or dated at and in any Trading City or Town, or in any other Place in the Kingdom of

England, Dominion of Wales, and Town of Berwick upon Tweed, Five Pounds or upward, upon any Person of or in London, any other Trading City, Town or Place, in which Bill or Bills shall be acknowledged the said Value to be received, and shall be drawn payable at a certain Number of Days, Weeks, Months, after the Date: That from and after the Presentation and Acceptance of the said Bills of Exchange (which Acceptance shall be by under-writing the same under the Parties Hand accepting) and after the Expiration of Three Days after such Bill shall be once due, the Party to whom such Bill is made payable, his Servant, Agent, or Assigns, may and shall cause

Where an Endorsee may bring an Action upon a Bill, after he hath endorsed it to another.

Protest made upon a Copy of a Bill.

The Drawer liable, tho' not presented in Time.

To pay a Bill of Exchange to the Bearer, is too general.

For Negotiating of Bills of Exchange in England.

9 & 10 W. 3. cap. 17.

## How to be protested.

How to be protested. such Bill to be protested by a publick Notary, and in Default of such Publick Notary, by any other substantial Person of the City, Town, or Place, in the Presence of two or more credible Witnesses, (Refusal or Neglect being first made of due Payment thereof) which Protest shall be made and wrote under a fair written Copy of the said Bill of Exchange, in the Words following:

### The Words of the Protest.

The Words of the Pro-  
test.

When to be sent to the  
Party from whom received.

When to be sent to the Party from whom received, which Protest so made, shall within Fourteen Days after the making thereof, be sent, or due Notice shall be given to the Party from whom the said Bill was received, who is, upon producing such Protest, to repay the said Bill, with Interest and Charges, from the Day such Bill was protested; for which Protest shall be paid not exceeding 8s. And in Default or Neglect of such Protest made and sent, or due Notice given within the Days before limited, the Person failing or neglecting shall be liable to all Damages, Costs and Interest, which shall accrue thereby.

**Proviso, where the Bill is lost.**

Provido, where the Bill is lost.

**Provided,** If such Bill be lost or miscarried within the Time before limited for the Payment thereof, then the Drawer shall give another Bill of the same Tenor, the Person giving Security to indemnifie him against all Persons, in case the said Bill so alledged to be lost or miscarried, be afterwards found.

By another Act, 3 & 4  
Annæ, cap. 9.

### How to proceed upon the Non-acceptance of each Bill.

### How to be protected.

or Affairs, may cause such Bill to be protested for Non-acceptance, as in case of Foreign Bills of Exchange, for which Protest shall be paid 2 s. and no more.

By another Act, made the 3<sup>d</sup> of  
*Anna Reginae*, cap. 9. it is enacted  
That in Case of presenting any such  
Bill, the Party on whom the same is  
drawn shall refuse to accept the  
same by under-writing the same  
aforesaid; the Party to whom such  
Bill is payable, his Servant, Agent

**3320bideb**

## Bill of Exchange.

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**Provided**, That no Acceptance of such Bill shall charge any Person, unless the same be under-written, indorsed in Writing thereupon: And if such Bill shall not be accepted by such Under-writing, or Indorsement in Writing, the Drawer of such Bill shall be liable to pay any Costs, Damages, or Interest thereupon, unless such Protest be made for Non-acceptance; and within Fourteen Days after such Protest, the same be sent, or notice given to the Party from whom such Bill was received, or left in Writing, at the usual Place of his abode.

What Acceptance shall bind.

And if such Bill be accepted, and not paid, before the Expiration of three Days after the same shall become due, no Drawer shall be compellable to pay any Costs, Damages, or Interest thereupon, unless a Protest be made, and sent, and notice given in manner aforesaid: Nevertheless, every Drawer shall be liable to pay Costs, Damages, and Interest upon such Bill, if any one Protest be made for Non-acceptance or Non-payment thereof, and notice sent, given, or left, as aforesaid.

Where the Drawer shall be compellable to pay Interest.

And where Costs and Damages.

**Provided**, That in all such Bills, the Value must be acknowledged and expressed in such Bill to be received; and such Bill must be for the Payment of 20 £. or upwards, and protested as aforesaid, otherwise not to have the Benefit of this Act.

Must be Value received.

And for the Payment of 20 £. and upwards.

**Provided**, That if any Person accepts such Bill in Satisfaction of a former Debt, the same shall be accounted a full Payment of such Debt, if such Person accepting the same for his Debt, doth not take his Course to obtain Payment thereof, by endeavouring to get the same accepted and paid, and make his Protest for Non-acceptance or Non-payment as aforesaid.

Acceptance of such Bill shall be a full Payment of it.

**Provided**, This Act shall not extend to discharge any Remedy against the Drawer, Acceptor, or Indorser of such Bill. This is for three Years, from thence to the End of the next Session of Parliament.

Shall not discharge any Drawer, Acceptor, or Indorser.

The Continuance of this Act.



All Promifory Notes fhall be taken to be due and payable to the Perfons to whom they are made payable.

Merchant or Trader, who is ufually intrufted by him, or them to fign fuch Promifory Notes for him or them, whereby fuch Perfon or Perfons, Body Politick and Corporate, his, her, and their Servants or Agents as aforefaid, doth, or fhall Promife to pay to any other Perfon or Perfons, Bodies Politick or Corporate, his, her, or their Order, or to the Bearer, any Sum of Money mention'd in fuch Note, fhall be taken and conftrued to be by Virtue thereof due and payable to any fuch Perfon or Perfons, Bodies Politick and Corporate, to whom the fame is made payable.

Which Notes fhall be assignable and endorfable as Inland Bills.

able over in the fame manner as Inland Bills of Exchange are or may be, according to the Custom of Merchants: And that

And the Perfons to whom made payable, may fue for the fame as upon Inland Bills.

in the fame manner as he, ſhe, or they, might do upon any Inland Bill of Exchange, made or drawn according to the Custom of Merchants, againſt the Perfon or Perfons, Bodies Politick and Corporate, who, or whole Servant or Agent, figned the ſame. And that any Perfon or Perfons, Bodies Politick and Corporate, to whom ſuch Note that is payable to any Perfon or Perſon, Bodies Politick and Corporate, his, her, or their Order, endorsed or affigned, or the Money therein mention'd, ordered to be paid by Endorſement thereon, ſhall and may maintain his, her, or their Action for ſuch Sum, either againſt the Perſon or Perfons, Bodies Politick and Corporate, who, or whole Agent or Servant, as aforeſaid, figned ſuch Note, or againſt

And recover Damages and Coſts.

recover his, her, or their Damages, and Coſts of Suit.

It is by the ſame Act further enacted, That all Notes in Writing which ſhall be made and ſigned by any Perſon, Body Politick or Corporate; or by the Servant or Agent of any Corporation, Banker, Goldſmith

And alſo every ſuch Note payable to any Perſon or Perfons, Bodies Politick and Corporate, his, her, or their

Order, ſhall be assignable or endorſable to the Perſon or Perfons, Bodies Politick and Corporate, to whom ſuch Sum of Money is or ſhall be by ſuch Note made payable, ſhall and may maintain

an Action for the ſame, in ſuch manner as he, ſhe, or they, might do upon any Inland Bill of Exchange, made or drawn according to the Custom of Merchants, againſt the Perſon or Perfons, Bodies Politick and Corporate, who, or whole Servant or Agent, figned the ſame. And that any Perſon or Perfons, Bodies Politick and Corporate, to whom ſuch Note that is payable to any Perſon or Perſon, Bodies Politick and Corporate, his, her, or their Order, endorsed or affigned, or the Money therein mention'd, ordered to be paid by Endorſement thereon, ſhall and may maintain his, her, or their Action for ſuch Sum, either againſt the Perſon or Perfons, Bodies Politick and Corporate, who, or whole Agent or Servant, as aforeſaid, figned ſuch Note, or againſt any of the Perfons that endorsed the ſame, in like manner as in caſe of Inland Bills of Exchange, and ſhall

## Bill of Exchange.

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And if such Plaintiff be nonsuited,  
a Verdict found against him, the  
Defendant shall recover his Costs.

Where the Defendant  
shall recover his Costs.

And it is further Enacted, That  
every such Action shall be commen-  
ced, and brought within such Time  
is appointed for commencing or  
bringing of Actions upon the Case, by the  
Statute made 21 Jac. cap. 16. Inty

The Action to be  
brought within the Time  
appointed by the Statute  
of Limitations.

21 Jac. ca. 16.

led, An Act for Limitation of Actions, and for avoiding Suited  
Law. (Note, This Act of 21 Jac. is commonly call'd, The  
Statute of Limitations.)

Prohibited, That no Body Politick  
Corporate shall have Power, by this  
Act, to issue or give out any Notes

Who may issue out these  
Notes.

themselves, or their Servants, other than such as they might  
be issued out, if this Act had not been made. This Act was  
made Perpetual, 7 & 8 Anne, ca.

Bishop.

## Bishop,

## See Courts.

Bishops act with and without Dean and Chapter.

**W**Hat Acts a Bishop may do concerning his Possession without the Assent of the Dean and Chapter; and what with their Consent: And also what he cannot do at all, tho' with their Consent. See the Bishop of Sarum's Case, 10 Rep. from 58. to 62. b.



# Bill of Exceptions.

They extend only by the Statute of W. 2. cap. 31. to Civil, not Criminal Causes. *Keyl. Rep. 15.*

The Exceptions ought to be in writing *sedente Curia*, in the Presence of the Judge, and signed by the Counsel on each Side.

Afterwards, the Bill must be shown up, and tendered to the Judge to try the Cause, to be by him

decided; which if he refuses to do, then upon a Petition to the Lord Chancellor, he will grant a Writ: Which see in the Register, fol. 182. a. b. for that Purpose,

When the Bill is signed, there goes a *Scire facias* to the Judge, who reads it *ad Cognoscendum Scriptum*, which when done, it is made Part of Record; and is returned as Part of the Record upon a Writ of Error to be brought for that Purpose.

Bills of Exceptions extend only to Civil, not to Criminal Causes.

When the Exceptions to be taken.

How to proceed upon it.

A *Scire facias* to the Judge *ad Cognoscendum Scriptum*.

Must be certified as Part of the Record.

**Books.**

# Of Books to be

Books, what, &c.

The Paper-Books, are those which are made up by the Clerks of the Papers of the Court of King's Bench. The Copies of Records, are those Books which are made by the Attornies for the Judges, where there is special Verdicts or Demurrers.

Books for the Judges to be at equal Charges of both Sides.

For it being doubtful in such Cases which are to be argued, whether the Law be on the Plaintiff's Side, or on the Defendant's, the arguing of the Case doth equally concern them, and therefore it is Reason they should be at an equal Charge bringing the Cause to be argued and determined. But if the Defendant or Plaintiff neglect to deliver Books to the Judges,

But if either Party neglect or refuse to deliver them, the Party who delivers them shall be allowed in Costs for them.

Charges of his Books in taxing of the Costs.

The Books ought to be delivered at the least Four Days before the Cause comes on.

and be ready to speak to

The Plaintiff to give Books to the two Senior Judges, and the Defendant to the other two Judges.

The Books here intended, are those which we call Paper-Books, and Copies of Records.

The Books which are to be delivered to the Judges, of Causes to be argued, are to be made at the equal Charge of the Plaintiff and Defendant.

the Party who would have the Cause come on must deliver them, otherwise the Cause will not come on. And if the Judgment of the Court be for the Party who delivered all the Books, he shall be allowed for the

The Attornies ought to deliver Books to the Judges at least Four Days before the Cause is to come on in the Paper, so that the Judges may have Time to peruse the Books before the Cause when it comes on.

When Books are to be delivered to the Judges in Causes which are to be argued, the Plaintiff ought to give Books to the two Senior Judges, and

The Defendant ought to give Books to the two Puisne Judges :  
 but if the Defendants Attorney doth not deliver his two Books  
 he ought to do, the Plaintiff's Attorney must take Care to  
 get it, and it will be allowed him in Costs by the Secondary.  
 Likewise if the Plaintiff's Attorney doth not do it, the De-  
 fendant's must.

**Bona Notabilia, See Administrations.**

Where the Defendant of  
 the youngest Son shall in-  
 herit, by Force of the said Custom.

Where the Defendant of  
 the youngest Son shall in-  
 herit, by Force of the said Custom.

Where the Defendant of  
 the youngest Son shall in-  
 herit, by Force of the said Custom.

Where the Defendant of  
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 the youngest Son shall in-  
 herit, by Force of the said Custom.

**But=**

Where the Defendant of  
 the youngest Son shall in-  
 herit, by Force of the said Custom.

Where the Defendant of  
 the youngest Son shall in-  
 herit, by Force of the said Custom.



# Burrough-English.

*Burrough-English, Quid.*

**Burrough-English**, is a Custom in some Ancient Burroughs and Coppyhold Manors; That if a Man hath several Sons and dies, the youngest shall inherit what his Father died seized of, as Heir to his Father, by Force of the said Custom.

Where the Daughter of the youngest Son shall inherit.

Where the Custom (as in Burrough-English) gives the Inheritance to the youngest Son there if the youngest Son dies without Issue Male in the Life-time of his Father, but leaves a Daughter who survived the Father, the Daughter, and not the youngest Son which the Father had at the Time of his Death, shall have the Estate. 3 *Anna B. R.*

Where the eldest Son shall have the Land, as Heir to his youngest Brother.

But where a Surrender was to the Use of himself for Life, and after to his Wife for Life, and he dies, leaving Three Sons, the youngest dies in his Mother's Life-time, and leaves Issue. Here the eldest Son shall have the Land as Heir to his youngest Brother, though he did not die seized; but the Reversion being in the youngest Son, the eldest shall inherit as Heir to him. 1 *Cro. 410.*

The Custom goes with the Land, and guides the Descent to the youngest Son.

A Man seized of Burrough-English Lands, devises them to A. and his Heirs for the Life of B. A. dies, leaving B. leaving 2 Sons, the youngest and not the eldest, shall have the Land. *Because the Custom goes with the Land, and guides the Descent to the youngest Son. 2 Lev. 138, 139.*

Where the Custom (as in Burrough-English) gives the Inheritance to the youngest Son there if the youngest Son dies without Issue Male in the Life-time of his Father, but leaves a Daughter who survived the Father, the Daughter, and not the youngest Son which the Father had at the Time of his Death, shall have the Estate. 3 *Anna B. R.*

But where a Surrender was to the Use of himself for Life, and after to his Wife for Life, and he dies, leaving Three Sons, the youngest dies in his Mother's Life-time, and leaves

A Man seized of Burrough-English Lands, devises them to A. and his Heirs for the Life of B. A. dies, leaving B. leaving 2 Sons, the youngest and not the eldest, shall have the Land.

# By-Laws.

## See London.

By-Laws, are certain Orders and Constitutions made by Corporations for the well government of their Members: Which By-Laws must be made by virtue of the King's Charter or Prescription, and ought to be approved of by the Lord Chancellor, Lord Treasurer, or Chief Justices, as the Statute of 19 H. 7. cap. 7. requires. There are also By-Laws made by Commoners, Inhabitants in Villis, &c.

By-Laws, *Quid.*

By-Laws must always be squared, and subject to the Rule of the Law of the Realm, as subordinate to it.

By-Laws must be subject to the Common Laws, not for the private.

Inhabitants of a Vill may, without any Custom, make Ordinances and By-Laws for the Reparation of the Church or High-Way, or such Thing which is for the Publick Good, and the greater Number shall bind the Lesser, without any Custom: But if it be, for their private Profit, as the well ordering of their Common, or suchlike, this cannot be done without Custom. 5 Rep. 63. a. 67. b.

What By-Laws Inhabitants of a Vill may make without Custom.

Corporations cannot make By-Laws or Constitutions, without Custom, or the King's Charter. 5 Rep.

What Corporations can make By-Laws.

See Cro. Car. 497. 498. Carter 178. 179. Corporations cannot make By-Laws made by a Corporation may inflict a reasonable Penalty but cannot imprison. And the Penalty may be levied by Distress, or Action of Debt. 5 Rep. 64. a. See 411. Pl. 363.

Corporations cannot make By-Laws made by a Corporation may inflict a reasonable Penalty but cannot imprison. And the Penalty may be levied by Distress, or Action of Debt. 5 Rep. 64. a. See 411. Pl. 363.

A By-Law cannot imprison, but the Penalty may be levied by Debt or Distress.

**Common Law prohibits**  
no Man to work at a law-  
ful Trade, and how far.  
5 Eliz.

How far By-Laws can  
be confirmed.

19 H. 7. cap. 7.

the Makers of them from the Penalty of 40 l. if they are  
good. 11 Rep. 54. b. See Co. R. 163. b.

What By-Laws by Cor-  
porations cannot exclude  
the Exercise of Trades:

And what may.

ving served as Apprentices to it in another Place. Hob. 20.  
But a By-Law, founded upon a Prescription or Custom, may  
do it. Raym. 294. Carter 69. 2 Brownl. 178, 182.

The By-Laws to be for  
the common Benefit, and  
not for the private.

An Apprentice or Jour-  
neyman shall not be bound  
to keep a Shop without  
Licence.

27 H. 8. cap. 5.

How Proof to be.

Corporations cannot be  
Judges in their own Cause.

A Servant may make  
Clothes for his Master, &c.

No Man can be prohibited by a  
By-Law to trade, farther than 5 Eliz.  
directs. 11 Rep. 536. Nor by the  
Common Law to work in a lawful  
Trade. *ibid.*

The 19 H. 7. cap. 7. doth not con-  
firm any By-Laws, but leaves  
them to be affirmed or disaffirmed  
according to the Reasonableness or  
Unreasonableness of them; but saves

A new Corporation not having a  
Prescription to appropriate to them-  
selves, and exclude others, cannot make

a By-Law to exclude all others from  
using a Trade in their Town where  
they were not Apprentices, they

being served as Apprentices to it in another Place. Hob. 20.  
But a By-Law, founded upon a Prescription or Custom, may  
do it. Raym. 294. Carter 69. 2 Brownl. 178, 182.

All By-Laws ought to be for the  
common Benefit, and not for the private  
Benefit of any particular Person.  
Goldsb. 79. Mo. 580.

By the 27 H. 8. cap. 5. No Ap-  
prentice or Journeyman shall, by Oath  
or Bond, be compelled not to keep  
any Shop, &c. without Licence of  
Master; the Proof cannot be by Oath  
for they have no Power to administer  
such Oath; and if the Proof must  
be by Indentures, or Witnesses, perhaps  
the Corporation will not allow the  
Proof for which the Party would have  
no Remedy. Besides, by their By-  
Law they are made Judges in their  
own Cause, which is unreasonable.  
Dare. 733.

If a Servant makes Clothes for his  
Master, Mistress or Children, this is  
not exercising of a Trade. 11 Rep.  
4, 11. Co. R. 54. a.



A By-Law, for a Livery-Man in London to pay a Sum of Money upon his being chosen and admitted, is a good By-Law, there being a Necessity for Money to support the Reputation and Honour of his Company. *Dani. 726.*

A Corporation cannot make a By-Law to bind those who are not of their Body. *2 Ventr. 33.*

A Penalty may be recovered by Action of Debt, without Limitation. *5. R. 84.*

If a Corporation, that hath a Power by Charter or Prescription to make By-Laws, makes a By-Law, and fixes a Penal Sum to be forfeited for non-Performance; this cannot be levied by Distress, without a Prescription do it, or an Appointment or Limitation by the By-Law for to *Co. 5. R. 82. Dy. 321. Pl. 23.*

A Corporation by Charter makes a By-Law under a Penalty, to be levied by Distress and Sale of the Officers Goods: This is no good By-Law, for the forfeiture cannot be levied by Sale of the Officers Goods. *2 Ventr. 182, 183.*

A By-Law cannot be made upon Pain of Forfeiture of the Goods. *8 Co. 17, b. 2 Ventr. 183. 1 Keb. 733.*

A By-Law to enforce the Payment of a Livery Fine, is good.

and Honour of his

By-Laws can't be made to bind Strangers.

May be recovered by Action of Debt.

A Penalty forfeited by a By-Law, cannot be levied by Distress, unless specially directed.

A By-Law to levy by Distress and Sale, is void.

Sale of the Officers

A By-Law upon Pain of Forfeiture of Goods, is void.

# Bridges,

## See Ways.

Common Bridges must be repaired by the County.

be not known who else ought to do it. Cro. Car. 365, 366. Dany. 743.

How Private Persons shall be obliged, and how Corporations.

*Ratione Tenure five Prescriptionis.* 2 Inst. 700. Co. 13. R. 2 Keb. 43.

A Bridge erected for a Private Use, but used as a Common Bridge, shall be repaired by the Erector:

But not when erected for the Common Good only.

He that hath but Part of the Land liable, must repair it.

and he must take his Remedy for Contribution against the For Bridges are of absolute Necessity, and must not lie

A Writ De Oneranda pro Rata Portione.

tionc. F. N. B. 235. b, Reg. 268, a. 2 Inst. 700.

Common Bridges of King ought to be repaired by Inhabitants of the County, if

A Private Person may be obliged to repair a Bridge. *Ratione Tenure*, not *Ratione Prescriptionis tantum*; a Body Politick may be bound, etc.

If a Man erects a Mill, and makes a new Cut for the Water to come it, and makes a new Bridge over that People used to go over as a Common Bridge, this must be repaired by the Owner of the Mill: Because it was erected for his own Benefit. If a Man makes a Bridge only for the Common Good of the King's Subject he is not bound to repair it. 2 Inst. 701.

If a Man hath only Part of Lands which *Ratione Tenure* ought to repair a Bridge; yet he alone may be presented, and compelled to repair it. 1 Jones R. 173. But the Justice may in such a Case have a Writ De Oneranda pro Rata

Where a Manor is charged *Ratone Tenure*, who must contribute.

But they who have any  
must contribute. *Hard.*

Inhabitants must not  
plead Not Guilty.

### What to plead.

### How the Indictment must be.

The Indictment must say, That it  
 Petit Publicus & Communis sit in al-  
 Regia Via super Flumen, &c. 2 Inst.

Civil Law, Co. 11 R. 44. a.  
 placed according to the Canon.  
 not answer, viz. Such Courts  
 Some can neither fine, imprison  
 Court Hundred &c. Co. 11 R. 44.  
 prison, but answer; as the Court  
 The Court cannot fine nor im-  
 Co. 11 R. 44. a.  
 at the Justices at the Plein Session  
 Some may imprison but not fine  
 1 R. 44. 34.  
 impositions as the Just. Co. 11 R. 44.  
 Some Courts may fine but not  
 fine and imprison. Co. 11 R. 44. a.  
 The Court, wale of Records.

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Some can only answer  
What Court may find  
but not impute.  
What Court may find  
and impute.

~~Spiritual Courts can act~~

The Court of King's  
 Bench collects the  
 revenues of all other  
 Courts.

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## Courts,



# Courts, and their Jurisdiction.

See First Part 127.

**Courts, what.**

**Courts, are the Places where Justice is judicially administered.**

What Courts can fine and imprison.

No Court, unless of Record, can fine and imprison. Co. 11. R. 43. b.

What Court may fine, but not imprison.

Some Courts may fine, but not imprison; as the Leet. Co. 11. R. 43. b. 1 Roll. Rep. 74. 34.

Some may imprison, but not fine.

Some may imprison, but not fine as the Constables at the Petit-Session. Co. 11. R. 44. a.

Some can only amerce.

Some Courts cannot fine nor imprison, but amerce; as the County Court, Hundred, &c. Co. 11. R. 44. a.

Spiritual Courts can neither fine nor imprison.

Some can neither fine, imprison nor amerce, viz. Such Courts proceed according to the Canon or Civil Law. Co. 11. R. 44. a.

The Court of King's-Bench corrects the Misdemeanors of all other Courts.

The Court of King's-Bench is a High Court, and corrects the Excesses and Misdemeanors of all the inferior Courts in England, and of the Ministers thereof, that they do not exceed their Jurisdictions, nor alter their Forms, for this Court is *For Jusitiae*. 22 Ca. 2. B. R.

*For Jusitiae.*

Corrects all Errors and Misdemeanors tending to the Oppression of the Subject.

It belongs to the King's-Bench to correct, not only Judicial Proceedings but also Misdemeanors Extrajudicial tending to the Oppression of the Subjects Rights, or raising of Faction

Debate, or any Manner of Misgovernment, so that no Injury, either Publick or Private, may be done. 11 Rep. 98. a.

An Record that is removed into the King's Bench, is ever remanded.

How. Rep. 187.

This Court of King's Bench is removeable at the King's Pleasure.

The Courts of King's Bench, Chancery, Common-Pleas and Exchequer, are Fundamental Courts; and in pleading them, you do not begin with a Prescription or Grant, as in Inferior Courts. Hob. 63.

If an Action be brought in an Inferior Court, of a Matter arising out of their Jurisdiction, the Defendant may, as soon as the Declaration comes against him, bring his Plea ingrossed under Counsels Hand into Court, setting forth, That the Fact was committed out of the Jurisdiction of the Court, and swear

his Plea, and the Court must allow it, and stop Proceedings, otherwise this Court will grant a Prohibition, or if they think fit, an Attachment.

The Court of Admiralty cannot hold Plea of a Matter arising from a Contract made upon the Land, though the Contract was made concerning Things belonging to the Ship: For such Matters are triable by the Common

Law; and tho' the Contract concerns Things belonging to Sea Affairs, this is but Collateral; and the Principal which directs Matter to demand the Action upon, is the Contract. But they may hold Plea of Mariners Wages. Because they become due for their Labour done upon the Sea: And the Charter-Party and Contract made upon the Land, is only to ascertain them. 3 Lev. 60. the Statute of 4 & 5 Annæ, for the Amendment of the Law.

Where one is elected Constable, and refuses to serve the Office, this Court may issue out a Writ of Mandamus to compel him to do it; so also they may do in case of several other Officers.

For where ordinary Means will not serve, this Court may

A Record cannot be remanded out of the King's Bench.

Removeable at the King's Pleasure.

The Courts in Westminster-Hall are Fundamental Courts, and have to be pleaded.

What the Defendant must do, when the Matter was not done within the Jurisdiction of the Court.

Viz. Must plead a Foreign Plea, and swear to it.

The Court of Admiralty cannot hold Plea of a Contract made at Land.

Tho' for Ship Matters.

4 & 5 Annæ.

May grant a Mandamus to compel an Officer who is elected to serve the Office.

Also, to restore an Officer turned out *vel Causam significare*.

Where Suit may be in the King's-Bench by Original.

may by Bill: But the common and most usual Way of Proceeding, is by Bill. But upon a Judgment in the King's-Bench, where it is by Original, no Writ of Error lies, but in Parliament.

Where Outlawry, after Judgment, lies in the King's-Bench.

ter Judgment, where the Cause commenced by Original, the Defendant may in this Court be outlawed after Judgment, if the Courle is in the Common Pleas.

Wife or not Wife, is triable at the Common Law: But lawfully married or not, by Certificate of the Ordinary.

be according to the Laws of Holy Church, viz. the Ecclesiastical Law, and therefore most proper for them to determine, whether Marriage was solemnized accordingly; and that is by Certificate of the Bishop, upon *Ne unques accouple en Loyal Matrimony*. But whether married or not, is triable at the Common Law; this is Matter of Fact, and not Matter of the Spiritual Law, and so not determinable by the Judges thereof, no more than Matters of Spirituality are triable by the Judges of the Common Law.

How Recognizances of Bails are enter'd into in the King's-Bench, and how in the Common-Pleas.

condemned, he shall render his Body to Prison, or pay the Condemnation-Money (without mentioning of any Sum), or the Bail will do it for him. In the Common-Pleas, if the Defendant himself be present, he is obliged in double the Sum in the Writ, and his Bail in the Single Sum. But if the Defendant is not there, then his Bail must be bound in double the Sum.

Also, this Court will grant a *Monstrans* to restore an Officer turned out *vel Causam significare*; but it cannot command the electing of a particular Person to be an Officer.

One may sue in the King's-Bench Court, Actions upon the Case, and Trespas and Ejectment, and other Trespases by Original, as well as by

where a Suit is commenced in this Court by Original, or is removed into this Court by Writ of Error out of the Common-Pleas: In all Cases

If the Issue be, whether a Wife, or not a Wife, it is triable at the Common Law: But whether lawfully married, or not lawfully married, is triable by a Certificate from the Ordinary. For a Marriage is pleaded

A Recognizance of Bail in the Common-Pleas, is enter'd into Specialy: But a Recognizance of Bail in the King's-Bench, is enter'd into Generally, viz. That if the Defendant



am, to render the Body of the Defendant into Prison, or pay  
e Condemnation.

The Court of Exchequer is a mix-  
Court, and doth consist of Law  
and Equity. The Plea Side is for  
Matters of Law, and the Exchequer-Chamber for Matters of  
Equity: On the Plea Side they proceed in *Latin*, and in the  
Exchequer-Chamber by *English Bill*, Answer, &c. as in *Chancery*;  
their Informations *Quo Warranto*, &c. are in *Latin*, and are  
on the Treasurer's Remembrancers Side.

Of the Court of Exchequer.

Although all Matrimonial Causes  
of long Time been determinable  
the Ecclesiastical Court, and are  
now properly within their Juris-  
diction, yet *ab initio* it was not so; for as well Causes of  
Matrimony, as Causes Testamentary, were Civil Causes, and  
appertain to the Civil Magistrate, until Christian Empe-  
rors and Kings granted or allowed to the Clergy the Juris-  
diction of those Causes. *Dav. R. 51. b.*

How Matrimonial and  
Testamentary Causes came  
to be determined by the  
Ecclesiastical Courts.

## County Palatines.

Of County Palatines, what  
they are, and by whom made;  
Privileges of them, and of their  
Courts. *Davis's Rep. from 58. b. to 66. a. b.*

Of County Palatines, and  
their Courts.

What is a good Cause for  
the Amendment of a Bill.

Barbours, and against his  
Bill shall not be changed in any  
Judicial Court for the  
of an Oath, which he takes when he comes to be a Member  
of the House of Commons. Yet if he hold an Ab. County  
Court, and to the Privilege of the Corporation, this does  
not force his Amendment, and is a Condition in Law

to render the Body of the Defendant into Prison, or to

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# Corporation.

Part 136.

**Warrant of Attorney.**

**Quo Warranto.**

**Grandamus.**

**Charitable Uses.**

**Disability.**

**Corporation, See**

**A Corporation, is an Artificial Body constituted of several Members, like a Natural Body: It is united by Franchises, and is called a Franchise by the Letters Patents of Incorporation; for all Corporations are made by Letters Patents, or Acts of Parliament; in some Places they prescribe to them, which in its implies a former Grant. 4 Mod. 55.**

**A Corporation may be dissolved, for it is created upon a Trust, and that be broken, 'tis forfeited: But Judgment of Seizure cannot be in such a Case; for if it is dissolved, to what Purpose shall it be seized. 4 Mod. 58.**

**In Colleges and Corporations, the major Part of the Members ought to give their Voices in Numero diffinitivo. Dav. R. 48. a.**

**A Disfranchisement ought to be founded upon an Act, which is against the Duty of a Citizen or Burgess, and to the Prejudice of the City Burrough, and against his Oath of a Freeman: For although he shall not be charged in any Judicial Court for the Breach of an Oath, which he takes when he comes to be a Minors Citizen, Burgess, &c. Yet, if he doth an Act contrary to his Duty, and to the Prejudice of the Corporation, this doth not much enforce his Amotion, and is a Condition in Law**

**What is a good Cause for the Amotion of a Citizen or Burgess.**

**How Corporations to give their Votes.**

annex'd to his Freedom, and he may be disfranchised if he  
breaks them. 11 Rep. 98. a. *Vide Title Mandamus.*

Words of Contempt, or Con-  
donos Mores, though against the  
Chief Officers, are no good Causes of  
disfranchisement, but are good Cause  
to commit him until he shall find  
redress for his good Behaviour. So  
if he conspire to do any thing  
contrary to the Duty or Trust of his  
Freedom: The Matter for which there  
shall be a Disfranchisement, ought  
to be an Act or Deed committed,  
and not a Conation, or going about  
to do an Act which way be repented

11 Rep. 98. b.

In case of a sole Corporation, be-  
ing by Charter or Prescription, as Bi-  
shop, Parson, Vicar, Master of an  
Hospital, &c. No Chattel either in  
possession or Possession shall go in Suc-  
cession, but the Executors will have  
it. But in case of a Corporation  
Aggregate, as Dean and Chapter,  
Mayor and Commonalty, &c. it is  
otherwise, for they in Judgment of  
Law never die. 4 Rep. 65. 4.

A Corporation which hath a Head  
may make a Personal Command with-  
out Writing, but a Corporation Ag-  
gregate without a Head cannot.

1497.

Actions arising out of the Corpo-  
ration, ought not to be tried in Cor-  
poration-Courts, for their Privileges  
properly and only extend to the  
trial of such Actions, the Causes whereof do arise within  
their Jurisdiction. And they ought not by Colour of their par-  
ticular Jurisdiction to encroach upon the Common Law. And  
to be punished for it. See *Lutw.* 157. 1572.

Where there is a Debt due to an  
Corporation, who are incorpora-  
ted by a new Name, they shall reco-  
gnize this by their new Name. 3 Lev.

4 Rep. 87. b. 1 Sand. 344. *Vide postea* in this Head.

Words of Contempt,  
though against the Chief  
Magistrate, no Cause.

But he may be bound to  
his good Behaviour on it.

A Disfranchisement can-  
not be without an Act  
done; a Conation is not  
sufficient.

In case of a sole Corpora-  
tion, no Chattel shall go  
in Succession.

But Executors or Admi-  
nistrators must have them.

But otherwise of a Dean  
and Chapter, or other Cor-  
poration Aggregate.

What Corporations may  
Command without Wri-  
ting, and what not.

What Actions may be tri-  
ed in Corporation-Courts,  
and what not.

The new Corporation  
may sue for a Debt to the  
old.

**How**



How to sue an old Corporation by a new Name.

Of Elections of Members in Corporations.

A Demise in an Ejectment by a Corporation, and held good *sans* Deed.

was assigned for Error: *But the Court would not allow it, being after Verdict.* Patrick and Ball, Mich. 8 W.

Corporation seals a Bond; Two of their Members sign it. The Corporation is dissolved. The Two Persons are not oblig'd.

The Deed of a Corporation needs only Sealing, no Delivery.

Cannot be a Trustee, or jointly seized.

A Promise to a Corporation good *sans* Deed.

Where the Misnomer of a Corporation in a Grant will not hurt it.

Misnomer of a Corporation in an Act of Parliament, or Will, shall not hurt.

Misnomer of a Corporation in a Bond.

could be said *Pro* and *Con* thereupon. 10 Rep. from 122. b. 126. b.

An old Corporation incorporated by a new Name, the new shall enjoy the old Privileges.

How to sue an old Corporation by a new Name. *Lum.* 519.

How the Election of Officers in Corporations shall be. 4 Rep. 77.

78. A Corporation of Mayor and Aldermen are Lessors in an Ejectment, and the Demise in the Declaration is not mentioned to be by Deed; and this *But the Court would not allow it, being* Patrick and Ball, Mich. 8 W.

A Corporation seals a Bond. Two of their Members sign it. The Corporation is dissolved. The particular Persons are not obliged by it. 1 Lev. 237.

The Deed of a Corporation need not to be delivered, as the Deed of a Natural Person; for the putting of the Common Seal, gives Perfection to it. *Dav. R.* 44. 4.

A Corporation cannot be a Trustee, or jointly seized with another. 2 Lev. 12.

A Promise to a Corporation good without Deed. 2 Lev. 252.

Where Misnomer of a Corporation in a Grant, shall not hurt the Grant. 3 Rep. from 73. to 76. 11 Rep. from 18. b. to 22. b.

Misnomer of a Corporation in an Act of Parliament, when the express Intent appears, shall not avoid the Act no more than in a Will. 10 Rep. 57. b.

The Case of the Mayor and Burgesses of *Lynn* upon the Misnomer of a Corporation in a Bond, and all that could be said *Pro* and *Con* thereupon. 10 Rep. from 122. b. 126. b.

An ancient Corporation is Incorporated by a new Name, yet their new Body shall enjoy all the Privileges that the old Corporation had. 4 Rep. 37. b. *Vide ante.*

# Corporation.

205

An Attorney cannot appear for a Corporation, nor a Bailiff in an Action, without a Warrant under the Corporation Seal. 1 Plow 91.

An Attorney or Bailiff cannot appear for a Corporation without a Warrant.

How and in what manner Corporations, erected heretofore for Works of Piety and Charity, may be confirmed. 10 Rep. from 23. to 34.

How erected Corporations for Charity may be confirmed.

Instructions how those which shall hereafter be erected, shall be so established, that no Exceptions can be taken to them. *Ibidem*. Vide Title Charitable Uses.

Instructions how to be established.

The Resolutions of certain Opinions or Questions, which might have disturbed the Quiet of the Law in these Points. *Ibidem*.

Resolutions of certain Opinions relating hereto.

Chattels, See Title Term for Years.

Chimney, See Waives.

Cafe, See Actions.

Double Costs upon a Judgment affirmed: 13 Car. 2. cap. 2. (sect. 10.)

Executor or Administrator for shall pay no Costs upon Judgment affirmed.

But shall pay Costs upon an Action secured in their own Time.

**Costs.**

How they may be paid by the Executor. 4 Jac. 2. 3 Lev. 60. See a Case in relation to this Purpose.

# COSTS AND CHARGES.

**COSTS AND CHARGES, See**

**1st Part 139.**

**Cepals.**

**Certiorari.**

**Statute.**

**Dammages.**

**Error.**

**Executors.**

**Administrators.**

**COSTS, What.** **C**OSTS are, Expense litis, recover-  
ed by the Plaintiff, together  
with his Dammmages; and the Lord Dampna includes all  
the Costs, as it is in the Entry of Judgments. Where the  
Jury give Dammmages and Costs, the Entry is que quidam  
Dampna, viz. the Dammmages and Costs together, in  
se attingunt ad, &c. Also the Defendant recovers his  
Costs where the Plaintiff is nonsuited, or a Verdict  
him.

Double Costs upon a  
Judgment affirmed:  
13 Car. 2. cap. 2. sect. 10.

Executor or Administra-  
tor shall pay no Costs up-  
on Judgment affirmed.

But shall pay Costs up-  
on an Action accrued in  
their own Time:

**Time.** and he may bring it in his own Name, without naming  
himself Executor. 4 Jac. 2. 3 Lev. 60. See a Case in Telverton  
to this Purpose.

**The Defendant in the Action, who**  
is Plaintiff in the Errors, shall on Af-  
firmance of a Judgment upon a Writ  
of Error pay double Costs, Stat.  
13 Car. 2. cap. 2. sect. 10.

If an Executor or Administrator  
bring a Writ of Error, and Judgment  
is affirmed against him, he shall not  
pay Costs: Because it is in Auter Droit  
3 Lev. 375.

But if an Executor bring Trover  
for a Conversion in his own Time  
and be nonsuited, he shall pay Costs.  
Because the Action accrued in his own



But an Executor brought an Assumpsit upon a Promise made to himself, and was nonsuited, he shall not pay Costs: Because, if he had recovered, it should have been Assers. 3 W. & M. B. R. Lev. 165.

Error in Fact was tried, and a Verdict for the Defendant in the Errors, and Costs were ordered to be taxed by the Stat. 3 H. 7. cap. 10. *Of nonsuited dilations Executions.*

Where the Defendant in Errors reads a Release of Errors, and a Verdict is found for him, he shall have no Costs, for that the Judgment not to be affirmed: But the Judgment is, That the Plaintiff the Error shall be barred of his Writ of Error; for here was either Nonsuit, Discontinuance, or Judgment affirmed, as the Statute of 3 H. 7. cap. 10. requires.

An Attachment lies against the Party that refuseth to pay Costs, which are taxed by the Master of the Office, upon a Rule of Court made for Payment of Costs after a Demand made by the Party, or some Person authorized by him, and Refusal of Payment, and Affidavit made thereof. For it is Contempt of the Court, not to obey the Rules thereof. If upon a Tryal the Plaintiff be forced to be nonsuit, because his Witnesses did not appear, he may by Action recover, together with further Recompence to the Party, of the Court, out of which the Loss and Hindrance sustained by the Party who procured such Process, by the Stat. 5 Eliz.

9. Sect. 12. By the Statute of 22 & 23 Car. 2. 9. Sect. 149. it is enacted, That all Actions to be brought in the Court of Westminster-Hall, of Trespass, Assault, and Battery, and other Personal Actions, wherein the Judge at the Tryal of the Cause shall not find, certify under his Hand upon the back of the Record, that an Assault and Battery was sufficiently proved;

And where he shall not certify on the back of the Record, that an Assault and Battery was sufficiently proved, he shall not be liable to pay Costs.

3 W. & M. B. R. Lev. 165.

Costs tax'd for the Defendant upon a Tryal of Errors in Fact.

Stat. 3 H. 7. cap. 10.

Where the Defendant in Errors reads a Release of Errors, and a Verdict is found for him, he shall have no Costs, for that the Judgment not to be affirmed: But the Judgment is, That the Plaintiff the Error shall be barred of his Writ of Error; for here was either Nonsuit, Discontinuance, or Judgment affirmed, as the Statute of 3 H. 7. cap. 10. requires.

No Costs where a Verdict is upon a Release of Errors, and why.

Stat. 3 H. 7. cap. 10.

Where Attachment lies for Non-payment of Costs.

Stat. 3 H. 7. cap. 10.

Action lies against Witnesses, who did not appear upon a Subpena.

Stat. 3 H. 7. cap. 10.

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Stat. 3 H. 7. cap. 10.

Where Attachment lies for Non-payment of Costs.

Stat. 3 H. 7. cap. 10.

Action lies against Witnesses, who did not appear upon a Subpena.

Stat. 3 H. 7. cap. 10.

or that the Freehold, or Title of the Land, in the Declaration was chiefly in Question; the Plaintiff in such Action, in case the Jury shall find the Damages to be under 40 s. shall not recover or obtain more Costs of Suit, than the Damages shall amount unto.

By another Act since: In all Actions of Trespals, where the Judge shall certify on the *Poslea*, that the same was Wilful and Malicious, he shall have his full Costs.

8 & 9 W. 1. cap. 10.

the Defendant was found Guilty, was Wilful and Malicious, he shall then have his full Costs.

Where the Plaintiff may amend his Declaration.

to plead, or else to refuse Costs, and to impart unto the new Term, and not to plead. The Defendant upon such Amendment is to have Costs, because thereby he may have Occasion to take Advice of Counsel what to plead. I take it to be absolutely necessary for the Plaintiff, after Amendment of his Declaration, to give a new Rule to plead, and to amend his Plea, and do not think that Judgment can be justifiably signed without it.

What the Plaintiff must do after his Amendment.

upon the Defendant for his Plea, and do not think that Judgment can be justifiably signed without it.

The Defendant shall have Costs in all Actions where the Plaintiff shall have them.

4 Jac. 1. cap. 3. 23 D. 8. cap. 15.

The Defendant shall have his Costs upon a Demurrer, by the Statute of

8 & 9 W. 1. cap. 10.

Where some of the Defendants are found Not Guilty, they shall have their Costs.

8 & 9 W. 1. 3. cap. 10. sect. 1.

Where Costs shall be recovered upon *Sci. Facias*, and in a Prohibition.

But now, by the Statute of 8 & 9 W. 1. cap. 10. it is enacted, That in all Actions of Trespals to be brought in any of the Courts at Westminster, wherein at the Tryal it shall appear, and be certified by the Judge under his Hand upon the *Poslea*, that the Trespals whereupon

It is at the Defendant's Election if the Plaintiff do amend his Declaration, either to accept of Costs

to plead, or else to refuse Costs, and to impart unto the new Term, and not to plead. The Defendant upon such Amendment is to have Costs, because thereby he may have Occasion to take Advice of Counsel what to plead. I take it to be absolutely necessary for the Plaintiff, after

Amendment of his Declaration, to give a new Rule to plead, and to amend his Plea, and do not think that Judgment can be justifiably signed without it.

The Defendant shall have Costs in all Actions of Trespals, Ejectment, or any Action where the Plaintiff might have them.

4 Jac. 1. cap. 3. Vide 23 H. 8. cap. 15.

If the Defendant hath Judgment upon a Demurrer, he shall have his Costs, by the Statute of 8 & 9 W. 1. cap. 10.

In all Actions of Trespals, Assault, False Imprisonment, or Ejectment brought against several Defendants if any of them be found Not Guilty, he shall have his Costs, per Stat. 8 & 9 W. 1. cap. 10. sect. 1.

So upon all Suits upon *Sci. Facias* and Prohibition, the Plaintiff obtaining a Judgment, or any Award or Execution.

Execution after Plea pleaded, or Demurrer joined therein, shall recover his Costs of Suit. And if the Plaintiff shall become Nonsuit, or offer a Discontinuance, or a Verdict against him, the Defendant shall recover his Costs. But on a Demurrer to a Plea to a *Sci facias* upon this Statute against an Administratrix upon an Interlocutory Judgment, *ars dampna affideri non debent*, where she pleaded a Special Plea and Judgment against her, it was held that she shall not recover any Costs. *Smith and Harmer. 3 Anne.*

Nonsuit, Discontinuance, or Verdict.

It is a Rule, that where the Plaintiff shall have his Costs if he recover against the Defendant, the Defendant shall have his Costs if the Plaintiff be nonsuit, or recovers a Verdict against him (unless in Case of Executors or Administrators).

Where the Plaintiff shall have his Costs, the Defendant shall have his, except in case of Executors or Administrators.

But where a Statute gives a Penalty certain, and gives an Action of Debt for it, there if the Defendant shall not pay it upon Demand, but set off the Party to a Suit, and he recovers, he shall recover his Costs: *Because he did not pay the Duty due by the Statute upon Demand.*

Where Costs shall be recovered in an Action of Debt upon a Statute.

But where the Duty is uncertain, he shall not recover treble Damages for it, or upon the Statute, for not bringing forth of Tythes; *There the Duty being uncertain, the Statute intended to give the treble Value and not any Costs. Cro. Car. 559, 560. 1 Kql. Abr. 516, Pl. 5. 10 Rep. 116. Et Postea hoc Titulo.*

No Costs where the Duty is uncertain, as treble Damages, &c.

Costs shall be paid upon a Record upon an Act of Parliament, where a single Sum is given. *3 Jac. 2.*

There shall be Costs where an Act gives a single Sum.

Where an Action upon the Statute is given to the Plaintiff, there if he recovers, he shall have Costs. But Costs shall be recovered in a Popular Action, be the Sum forfeited certain or uncertain, unless given by the Statute particularly.

Where the Statute gives the Action to the Plaintiff, he shall have Costs; but none in a popular Action.

*W. M. B. R. Lutw. 201. 3 Lev. 375.*



Where treble Damages and Costs shall be recovered.

2 *Ed. 3. cap. 5.*

Damages; But, says the Court, in a reasonable Manner. 6 *W. & M. B. R.*

Where Costs in Waste and Debt for Tythes.

by the Jury, doth not exceed Twenty Nobles, the Plaintiff shall have his Costs, *per Stat. 8 & 9 Ed. 3. cap. 10.*

Single or Double.

the Matter is purely as it stood before that Statute.

No Costs in a *Quare Impedit*.

Where Damages are recoverable by the Statute of 6 *Ed. 3. cap. 4.* of Gloucester, and of Merton.

See Title Damages.

Statute of Merton.

Affize, &c. or in Personal Actions, as in Trespass, &c. should. And where it is said, That in all Cases where the Plaintiff recovers Damages, he shall recover his Costs, to be intended in all Cases where Damages were recoverable

An Exposition of 6 *Ed. 1. cap. 1.* which is a Statute of Creation.

in a new Case gives Damages, either Single, Double, Treble, the Plaintiff shall not recover his Costs: Because it is an Act of Creation, which gives a Recompence where there was none

How in case of an Additional Act. Case of an Additional Act, which gives a greater Recompence than was given before, for there Damages and Costs were given by Common Law; but the Act increases them, and then the Plaintiff shall have his Costs. *Pilfold's Case, 10 Rep. 116. a.*

The Statute of 2 *W. & M. cap. 1.* for Distress for Rent, says, That upon a Rescous the Plaintiff shall recover treble Damages and Costs; the Costs shall be treble as well as the

In Actions of Waste, and Debt, for not setting forth of Tythes, where the single Damages, or Value found shall have his Costs, *per Stat. 8 & 9 W. 3. cap. 10.* But if they exceed the Sum, then there is no Costs, for the

Also in a *Quare Impedit*, there are no Costs recovered. *Keilw. 20. a.*

At the Common Law before the Statute of Glouce. 6 *Ed. 1. cap. 1.* a Man should not recover Damages in a Real Action, as in *Aiel, Mancester, &c.* nor in Dower before the Statute of Merton. But in Mixt Actions, as Affize, Entry, in Nature

before, or by the Statute of 6 *Ed. 1.* For where a Man before or by the same Statute recovered no Damages, if afterwards another new Statute gives Damages, either Single, Double, Treble, the Plaintiff shall not recover his Costs: Because it is an Act of Creation, which gives a Recompence where there was none before. But otherwise it is in the

Case of an Additional Act, which gives a greater Recompence than was given before, for there Damages and Costs were given by Common Law; but the Act increases them, and then the Plaintiff shall have his Costs.

By the Statute of 4 & 5 Anne, it enacted, That if several Matters shall be pleaded with the Leave of the Court, and shall upon Demurrer be adjudged insufficient, Costs shall be given at the Discretion of the Court; or if a Verdict shall be

found in any Issue, in the Cause for the Plaintiff or Defendant, where several Pleas are pleaded, Costs shall be given in the manner; unless the Judge who tried the said Cause shall certify, That the Defendant, or Tenant, or Plaintiff, in Replevin had a probable Cause to plead such Matter, which shall be found against him. See Title *Demurrer*, and Title *Pleas*.

By the same Statute, Costs are given against the Plaintiff in Errors, for quashing of a Writ of Error, for Variation from the Original Record, or for Defect; which Costs shall be, as the Judgment had been affirmed.

And by the same Statute, upon the Plaintiff's dismissing of his Bill in Chancery, or the Defendant dismissing it for want of Prosecution, the Plaintiff shall pay full Costs, to be taxed by a Master.

If one will give Leave to another to sue in his Name, he that grants

Leave shall pay the Costs of the Suit, in case there be a Reversal, or a Verdict, against him. *Hill. 22. Car. B. R.* For be the Person upon Record, of whom the Law takes Notice, and the Court takes no Notice of the private Agreements between the Parties: neither can Execution be made out against any other than the Person against whom the Judgment is, and the Costs are recovered.

Where a feigned Action was ordered to be tried at the Assizes, upon

Issue, directed by the Court of King's Bench upon a Matter in the Crown-Office, and there a Verdict for the Plaintiff; he shall thereupon have his Costs. *1 Anne B. R. inter Still and Rogers.*

Where Costs shall be given by the Stat. of 4 & 5 Anne, upon Insufficiency of Demurrers, or Judge's Certificate upon Issue tried.

4 & 5 Anne, cap.

Costs are also given to the Defendant in Error, upon Quashing of a Writ of Error.

So also upon the Plaintiff's dismissing of his Bill in Equity; or the Defendant dismissing of it for want of Prosecution.

Who shall pay the Costs.

Costs upon a feigned Action.

Croft, See Title Cost.

# Chancery,

Chancery, See { 1st Part 148.  
Courts.

Court of Chancery, Quid.

and on the other Side it is a Court of Equity.

Where Matters of Equity  
are to be determined.

of Mind. *Co. 12 R. 113. See 4 Inst. 78, 79. 2 Inst. 552, 553, 554. 1 Lev. 242.*

Of what Matters the  
Chancery may hold Pleas.

23 H. 8. ca.

zances, upon 23 H. 8. in the Nature thereof: But the Execution upon a Statute-Merchant is returnable in the King's Bench or Common Pleas. 4 Inst. 79.

Equitable Causes anciently heard before the King.

Chancellor; and that the first Statute which gave Countenance to this Court, was the 36 E. 3. ca. 9. But such Cases were rare till Edward IV.'s Time, when they increased by Occasion of Uses. See 12 Co. 113. that the Court of Chancery hath had a Jurisdiction, Time out of Mind.

Their Orders but in  
Paper.

The Court of Chancery, is  
the Petty-Bag Side a Court  
of Law, being a Court of Record  
and on the other Side it is a Court of Equity.

Matters of Equity ought to be  
determined in the Court of Chancery  
which hath had Jurisdiction, Time

The Chancery may hold Pleas  
Sci' fa' to repeal Patents, Petitions  
Monstrans de Droit, Traverses of  
Fines. 4 Inst. 79. So of Executions  
upon Statutes-Staple, or Recognizances.

It is said in the 1 Lev. 242. *arguendo*, That Equitable Causes were  
anciently heard by the King himself  
and sometimes by Reference to the

Note, The Chancery Orders are  
but in Paper, and not of Record, but  
triable *per Pais*. Tel. 227.



The Chancellor cannot by a Decree bind the Right of the Land, but can only bind the Person; and if he will not obey, he may commit him to prison until he obeys it. 27 H. 8. 15. But where there hath been an ancient Possession, he may make an Order for the Quieting of it, but cannot give Damages. 3 Bulstr. 34. Lit. R. 166.

The Benefit of an Agreement for the Purchase of Lands was devised and decreed to the Devisee. 1 Chanc.

Cases 173, 174, 208, 212. Also agreed, that where a Man contracts for Land on this, the Vendor becomes a Trustee for the Purchaser, and the Purchaser may devise. 1 Chanc. Cases 39.

The Chancery will not relieve against an express Maxim of the Common Law. 4 Rep. 124. a. See Dan. 754, 5, &c.

Chancery will relieve a Purchaser of a Term against a Dormant Title, when Money hath been laid out upon Improvements. 2 Lev. 152.

By the Statute of 4 & 5 Anne, the Plaintiff shall pay full Costs, to be paid by a Master, upon the Dismission of his Bill in Equity, either by himself, or by the Defendant, for want of Protraction.

Also, by the same Statute it is enacted, That no Copy, Abstract, or Memor of any Bill in Equity, do go with the Dedimus, or Commission for

taking of the Defendant's Answer: But in Lieu and Recompence thereof, the Sworn Clerks of the Court of Chancery shall be to their own Use, in all Causes,

the whole Term Fee of 3 s. and 4 d. and also the whole Fee or Fees, of

and for all small Writs made by the said Sworn Clerks.

A Decree binds not the Land, but only the Person.

May quiet an ancient Possession, but cannot give Damages.

An Agreement for the Purchase of Land may be devised.

The Vendor becomes a Trustee.

Will not relieve against an express Maxim of Law.

Will relieve against a Dormant Title for Improvements.

Costs to be paid upon a Dismission of the Bill.

Stat. 4 & 5 Anne.

No Copy or Tenor of the Bill shall go with the Dedimus.

The Recompence allowed for it.



where a Man was only Tenant in Tail in Equity, this Court would decree such Disposition good: For a Trust and Equi-

able Interest is a Creature of their own, and therefore disposible by their Rule. 2 Ventr. 350.

In 2 Ventr. 350, 351. the Court would not decree Infants to be fore-closed till they came of Age; (tho' sometimes it is so done) because the Mortgage depended upon a disputable Title.

A Man is not bound to discover the Consideration of a Bond, which implies in it self a Consideration. 200, 201.

Lessee for Years, without Impeachment of Waste, towards the end of his Term intends to cut down all the Timber-Trees; an Injunction lies

at of Chancery to stop it, notwithstanding the Agreement of the Parties: Because it is against the publick Good to destroy the Trees; and the Suit there is to hinder it, and not to have Damages when done. M. 14 Ca. 1. Salwaj's Case: And

Chanc. R. 32. My Lord Chancellor declared, That he would stop the pulling down of Houses, or defacing of them by Tenant after Possibility, or Tenant for Life, punishable of Waste express Grant, or by Trust.

That which may be tried by a Jury, is not triable in Chancery; for in the first Case, if the Jury give not their Verdict according to Evidence, an Attaint lies; but in the second, there is no Remedy. 4 Inst. 85. Hard. 51.

Where the Decree is for Payment of Money, no Bill of Review ought to be brought till paid; but this hath been dispensed with in some Cases, 1 Chanc. R. 42.

If an Executor is Defendant in Equity, and there is a Decree against him, he shall not pay Costs, (tho' Executor Defendant at Law pays them) for he cannot plead it at Law in Excuse of Assets. 4 165.

A Trust and Equirable Interest disposible by the Chancellor.

What the Court will do in case of Infants, when a Fore-closure is sued for.

Not bound to discover the Consideration of a Bond.

An Injunction lies against Lessee for Years, without Impeachment of Waste.

So also against Tenant after Possibility.

And Tenant for Life.

What is triable at Law, is not in Chancery.

Attaint lies; but in the second, there is no Remedy.

Not to Review a Decree for Payment of Money.

1 Chanc. R. 42.

An Executor Defendant pays no Costs in Equity, altho' he doth in Law.

for he cannot plead it at Law in Excuse of Assets.



No Relief to be prayed in a Bill to perpetuate Testimony.

A Devise for Payment of Debts out of the Real and Personal Estate.

shall be reimbursed out of the Real Estate. 2 Chanc. Cases 100.

Upon a Devise for Payment of Debts.

sufficient, then by the Sale of his Lands in C. and if those were not sufficient, then for Sale of his Lands in D. and devise 500 l. per Annum out of his Lands in D. The Trustees sold the Lands in B. and Part of the Land in D. so that the Residue was

What Lands shall be charged.

of the Arrears of the Annuity. 1 Chanc. Cases 295.

Upon a Mortgage and Devise for Life, Remainder in Fee, both shall contribute.

Life to pay One Third, he in Remainder Two Thirds. 1 Chanc. R. 271.

Who is not bound to discover.

Where the Defendant may plead, That he is a Purchaser for a valuable Consideration.

is a Purchaser for a valuable Consideration, without shewing what the Consideration was. Mich. 15 Car. 2. inter Mor. & Mayhew, 34.

Mortgagor borrows more Money, the Heir must pay it if bound in the Bond.

ing of the Debt upon Bond, if the Mortgagor bound himself and his Heirs in the Bond. 2 Chanc. Cases 164.

In a Bill to perpetuate Testimony if the Plaintiff prays Relief, the Bill shall be dismissed. 2 Vent. 366.

If a Man devises, that his Debts shall be paid out of his Real and Personal Estate; if the Executors pay more than his Personal Estate, they

A Devise, that his Lands in A shall be sold for the Payment of his Debts; and that if those were not

not sufficient to answer the Annuity and therefore decreed, That the Lands in C. should be sold for the Payment

If A mortgages Lands for 100 l. and then devises to B for Life, Remainder to C. in Fee; C. may compel B. to pay his Share of the 100 l. 1 Chanc. R. 234. viz. The Tenant for

A Purchaser, for a valuable Consideration, is not bound to discover his Title. 2 Chanc. Cases 47.

A Bill is brought to be relieved upon a Trust, and charges the Defendant with Notice before his Conveyance; the Defendant may by Answer deny the Notice, and plead, That he

If the Mortgagor borrows more Money of the Mortgagee, and gives Bond for it, the Heir of the Mortgagor shall not redeem, without paying

The Heir of the Mortgagee exhibits a Bill to have the Money paid, or to foreclose; resolved, That the Executor of the Mortgagee ought to have been made a Party, for he may have Title to the Money. 1 *Chanc. Cases* 51.

There shall be no Bill in Equity against an Executor to discover Assets, before a Suit commenc'd at Law; for perhaps, if he were sued at Law, he would confess, and pay the Debt. *Hard.* 115.

The Chancery, either before or after Issue, may adjourn any Cause here depending, and transmit the Record into the King's Bench, there to be determined. 2 *Sand.* 27. If there be an Issue to other Part, the whole Cause is continued in B. R. and Judgment given there. *Mod.* 29. It was said, That the Chancery might have given Judgment before the Record came in B. R. *Keb.* 584, 587, 588, 608.

Where a Peer is to be sued in Chancery, the Lord Keeper writes a Letter to him; and if he answers not, then goes a *Subpoena*; then an Order, to shew Cause why there should not be a Sequestration; and if he still stands out, then Sequestration goes; for there can be no Process of Contempt against his Person, 2 *Vent.* 342.

If there be an Order, that one shall stand committed to the Fleet for Breach of a Decree: By this Order only the Warden hath no Power to take and imprison him; but in pursuance to the Order, there ought to be a Writ awarded to take him. *H.* 21 & 22 *Car.* 2. in B. R.

Where a Bill is barely to discover a Deed, or only in order to have it produc'd at the Tryal, the Plaintiff need not swear that he hath a Deed, and seeks Relief upon the Matter of the Deed, and Oath is necessary, *Ibidem.*

A Bill to foreclose, must be brought as well by the Executor, as Heir of the Mortgagee.

No Bill for Discovery of Assets till Suit commenc'd, and the Debtor would confess, and pay.

The Chancery may adjourn a Cause to B. R. to be determined there.

There shall be a Demurrer to Part, if the Record shall be transmitted there. 2 *Sand.* 23, 24.

Or may give Judgment upon the Demurrer before the Issue comes into B. R.

How to proceed in Chancery against a Peer.

A Man shall not be taken into Custody by an Order, but it must be by Writ.

There shall be a Writ awarded to take him. *Furlong vers' Bray.*

Where an Oath is necessary where a Deed is lost, and where not.

Where a Bill suggests the Want of a Deed, and seeks Relief upon the Matter of the Deed, Oath is necessary, *Ibidem.*

Where a Bill may be brought against several Persons, and where not.

Natures, and is brought against several Persons, which occasions several Answers and Examinations, its naught. *Hard. 337.*

The Feme, and not the Barons Executors, shall have the Money of the Feme decreed to Baron and Feme.

Where Notice to the Agent shall affect the Purchaser.

Notice must be denied by Answer, not by Plea.

A Bill may be brought against several Parishioners for Tithes, because they are of the same Nature: But where it concerns Things of distinct

If Baron and Feme have a Decree for Money in the Right of the Feme, and the Baron dies, the Feme, and not the Baron's Executors, shall have it. *1 Chanc. Cases 27.*

Where Notice to him that purchases for another shall affect the Purchaser himself. *1 Chanc. Cases 39.*

Notice must be denied by way of Answer, and not by Plea. *1 Chanc. Cases 161.*

Or may give Judgment upon the Decree before the Judge of the Cause.

How to proceed in Cases very against a Person.

How to proceed in Cases where a Person is not a Party.

A Man shall not be taken into Custody by an Officer, but it shall be by a Writ.

Where an Officer is not to be a Writ directed to.

Where an Officer is not to be a Writ directed to.

Where an Officer is not to be a Writ directed to.

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# Capias ad Satisfaciendum,

See First Part 149.

**T**his is a Judicial Writ which issues out of the Record of a Judgment, where there is a Record of Debt, Damages, and Costs, or either of them; and by this Writ, the Sheriff is commanded to take the Body of the Party, and him safely to keep, so that he hath his Body in Court at the Return of the Writ, to satisfy the Plaintiff his Debt and Damages.

*Ca. Sa. Quid.*

There must be Seven Days exclusive betwixt the Teste and Return every *Capias ad Satisfaciendum*, to warrant a *Sci. Fa.* against the Bail; and the *Capias* ought to be delivered to the Sheriff of the County, or his Under-Sheriff, Four Days (exclusive, and none of them must be a Sunday) before the Return thereof; For the Defendant cannot render himself, but to the Sheriff or Under-Sheriff, and in the County where he is Sheriff or Under-Sheriff. 6 W. B. Regis.

*Ca. Sa. to warrant a Sci. Fa. against Bail, how to be.*

When to be deliver'd to the Sheriff.

A *Capias* duly sued out and returned, may be filed afterwards: For the filing of it is not of the Essence of the Writ; but it is that which makes it a Record of the Court.

When a *Capias* may be filed.

The Sheriff cannot upon a *Ca. Sa.* take the Money, and discharge the Prisoner: Because the Writ is *quod capias* the Defendant, & *eum salvo* Hod. ita *quod Habeas Corpus ejus*, such Day, *coram Domino Rege apud West-*

The Sheriff cannot take the Money, and discharge the Prisoner upon a *Ca. Sa.*

And why.

*monasterium,*

*monasterium, ad Satisfaciendum eidem, the Plaintiff, &c. Be upon a Fi. Fa. he may take the Money. Lutw. 586, 587.*

Judgment against Two upon *Sci. Fa.*

And a *Ca. Sa.* against one only, is good.

was Joint and Several, and so may the Execution be thereupon 1 Lev. 226. See Title Bail.

Two are Bail, and Judgment against them on a *Sci. Fa.* and a *Capias ad Satisfaciendum* was sued out against one only, and good: Because the Recognizance, upon which the Judgment *quod habeat Executionem* was obtained,

Chal

# Challenge.

Challenge, See } First Part 149.  
Jury.  
Default.

Challenges made to Jurors, is either to the Array, or to the Poll. Challenge to the Array, when Exception is taken to the whole Number: Challenge to the Poll, is when Exception is taken to any one or more, as not indifferent.

Challenges to the Array and Poll, what.

When the Jury appear at a Tryal before the Secondary calls them particularly by Name upon the Panel to be sworn, he bids the Plaintiff and Defendant to attend their Challenges, viz. *Gardes vostres Challenges*; and then he goes on and swears them: And it is too late to challenge them when they are sworn.

When to challenge the Jurors.

It is a good Challenge, where a Peer is a Party, to say, That there is no Knight returned of the Jury. *Plow. 117. a.*

It is a good Challenge for a Peer to say, That there is no Knight returned upon the Jury.

Cor=



# Certiorari.

**Certiorari.** See { First Part 153.  
James.  
Error.  
Sessions.

**Certiorari, Quid.**

**C**ertiorari, is a Writ which Issues out of the King's-Bench, or any Inferior Court of Record, commanding them to certify to them the Loquela, (viz.) the Pleint which is before them, Cum omnibus ea tangentibus which when returned, then upon a Rule given, Bail may be put in before a Judge, or else a Writ of Procedendo may be granted. There is also a Writ of Certior which is sued out of the Crown-Office, to certify Indiments, &c.

A **Certiorari** to certify Diminution.

Errors assigned is joined, and all the whole Matter entered upon Record, and the Record is made a *Concilium*, if it shall appear to the Court that there is a Diminution in the Proceedings.

Where it cannot be issued out without a Rule of Court.

The Court will not grant a **Certiorari** to reverse a Judgment.

Of **Certiorari** granted by the Stat. 5 & 6 Ed. 2. cap. 11. where by the Court, and where out of Court, and how to be sued out.

A **Certiorari** lies of Course to certify Diminution in a Writ of Error: But in case an Issue upon the Record is made a *Concilium*, if it shall appear to be certified, they do grant a Rule for a **Certiorari** to certify the same without which Rule the Writ cannot be issued out.

The Court will grant a new **Certiorari** to affirm, not to reverse Judgment. *Hill. 6 W. B. R.*

By an Act made 5 & 6 W. 3. cap. 11. Entituled, *An Act to prevent Delays of Proceedings at the Quarter Sessions of the Peace*, which was Temporary. But by an Act made 8 W. 3. cap. 33. it is made Perpetual.

is enacted, That in Term-time no Writ of **Certiorari**, at the Prosecution of any Person indicted, be granted or directed out

the Court of *King's-Bench*, to remove any Indictment, or Presentment of Trepass or Misdemeanor, before Tryal had been before the Justices in the Courts of General or Quarter-sessions, unless the same be granted upon Motion made for it before the Judges of the said Court, sitting in open Court; and that all the Parties indicted, prosecuting such *Certiorari* before the Allowance thereof, shall find

efficient Manucaptors, who shall enter into a Recognizance before one of the Justices of the Peace in the County in 20 l. with Condition, at the Return thereof, to appear and plead to the said Indictment or Presentment in the *King's-Bench*: And at his own Costs and Charges, to procure the Issue that shall be joined upon the said Indictment or Presentment, or any Plea relating thereunto, to be tried at the next Assizes for the County where

the same was found, if not in London, Westminster, or Middlesex: And if in the said Cities or County, then to procure it to be tried the next Term, after such *Certiorari* shall be granted; or the Sitting after the said Term, if the Court of *King's-Bench* shall not appoint any other Time for the Tryal thereof: And if any other Time shall be appointed, then at such other Time; and to give Notice of such Tryal to the Prosecutor, or his Clerk in Court, which Recognizance shall be certified into the *King's-Bench*, with the *Certiorari* and Indictment; and the Name of the Prosecutor (if he be the Party grieved), or some Publick Officer, to be endorsed on the Back of the said Indictment: And if such Defendant shall not, before the Allowance thereof, procure such Manucaptors to be bound in a Recognizance as aforesaid, the Justices of the Peace may proceed to Tryal, notwithstanding the *Certiorari*.

That if the Defendant prosecuting of such *Certiorari* be convicted, the Court of *King's-Bench* shall give reasonable Costs to the Prosecutor of the Indictment, if he be the Party grieved; or a Justice of the Peace, Mayor, &c.

That the Prosecutor, within Ten Days after Demand, shall have an Attachment for his Costs, and the Recognizance shall not be discharged till Costs paid.

To find Security to prosecute.

To try it.

Where Costs to be given, if the Court shall see Cause.

What Remedy for the Costs.

That

How to be granted in Vacation-time.

Not to extend to Indictments for Repair of Highways.

Another Stat. 8 & 9 Ed. cap. 32. for prosecuting a Certiorari to remove Indictments.

captors, who shall enter into a Recognizance before any one of the Justices of the Court of *King's Bench*, in the same Sum, and under the same Condition, as is required by the said Act. Whereof Mention shall be made on the Back of the said Writ, under the Hand of the Justice, taking the same which shall be perforce, and stay all Proceedings upon any Indictment; for Removal whereof, such Certiorari was granted. And also it shall be the Condition of such Recognizance, for the Defendant to appear from Day to Day in the said Court of *King's Bench*, and not to depart, until he shall be discharged by the said Court.

How to prosecute Certiorari upon the Stat. 4 & 5 Ed. & 9 Ed. for destroying of Game.

destroy the Game of the Kingdom. See Title Game.

A new Tryal may be granted upon a Judge's Certificate.

Whereupon the Court, upon such Certificate, and on Payment of Costs, usually grants a new Tryal.

A Certiorari upon a Writ of Error to certifie an Original, and Warrant of Attorney, to whom to be directed.

That in Vacation-time, Certiorari may be granted by any of the Judges of the *King's Bench*, and Security shall be found before the Allowance thereof.

A Proviso, as to Indictments for not repairing of Ways, Causeways, Pavements or Bridges.

By an Act made 8 & 9 W. cap. 32. it is enacted, That the Party prosecuting a Certiorari to remove any Indictment from the General or Quarter Sessions, may find Two Masters.

How to prosecute and sue out a Certiorari to remove a Conviction, or other Proceedings, upon the Stat. 4 & 5 W. & M. for the more easie Discovery and Conviction of such as shall

The Justice of Assize, before whom the Cause was tried, may certifie to this Court, if a Jury do find a Verdict against the Evidence given them.

A Certiorari to certifie a Warrant of Attorney, must be directed to the Chief Justice: And to certifie an Original, must be directed to the *Clerk of the Brevium*, and be returned by him, and is not to be directed to his Deputy, or returned by him.



A **Certiorari** lies from the **King's-Bench** to the **Cinque-Ports**, to certify an Order made by them for the Relief of the Poor. 2 Lev. 86.

Where the Court which awards the **Certior.** cannot hold Plea upon the Record it self, there but a Tenor shall be certified; otherwise, if the Record it self should be removed, there would be a Failure of Right afterwards. See Dr. 187. Pl. 4. Danno. 792.

In Debt in B. R. upon a Judgment at Bristol, the Defendant pleaded **Nul tiel Record**, and a **Certior.** issued from B. R. to certify it, and it was certified under the Seal of the Court of Bristol.

Dr. El. 821. And said, That the Course was so, and that it needed not to come in under the Great Seal. But upon an Action of Debt brought in an Inferior Court, upon a Judgment in the **King's-Bench**, there upon **Nul tiel Record** pleaded the Court of Chancery will grant a **Certior.** to the Court of **King's-Bench**, to certify the Record into Chancery, and, when it is there, send it into the Inferior Court by **Mittimus**.

**Certiorari** to the Cinque-Ports, to certify an Order for the Relief of the Poor.

Where only the Tenor, and not the Record it self, is to be removed.

Where a **Certior.** granted out of B. R. to certify a Judgment upon **Nul tiel Record**:

And where out of Chancery for it.

## Commendams.

Of the Original and Nature of them, see at large in the Case of Commenda, in Davis's Rep. from 79. to 83.

Q

**Claim.**

Contrary to the Charter  
power to certify an Order  
for the Relief of the Poor.

A Certificate lies from the King's  
Court to the Chancery-Lords to certify  
an Order made by them for the Re-  
lief of the Poor. 2 Lev. 86.

Where only the Term  
and not the Record is left,  
it is to be removed.

# Claim.

Where the Court  
cannot find the Record  
it left, there but a Tender  
shall be certified; otherwise if the  
Record is left, there but a Tender

there would be a Failure of

Claim, it is a Challenge

Claim, 2 Lev. 7.

Of the Property

has not in his Possession, but is wrongfully  
from him.

Ownership of a Thing which

See the Statute of 4 & 5

as to this Matter in Title Entry

and how Claim is to be made.

And where out of Chan-

upon a Judgment in the King's

not for it.

the Court of Chancery will

to certify the

into Chancery, and when it is there, send it into the

# Commencement.

the Original and Return of them, see at large in  
the Case of Commend, in Davis's Rep. from 79. to 83.

Chan

Claim

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# Charitable Uses.

See Corporations.

A Man may at this Day give Lands, Tenements and Creditments, to any Person and his Heirs, for the finding of any Preacher, Maintenance of a School, Relief of maimed Soldiers, Maintenance of the Poor, Reparation of Churches, High Ways, Bridges; to make a Stock for poor Labourers in Husbandry, and poor Apprentices, Marriage of poor Virgins, or any such Charitable Use. But it is convenient, upon any Feoffment, to reserve to the Feoffor, and his Heirs, a small Rent, or to express a small Sum, and any such Consideration, for the Patrons aforesaid.

Who may give Lands to Charitable Uses.

And for what Uses.

How to be settled.

Rep. 26. a.

Devises to Corporations to Charitable Uses, are good, by the Statute Eliz. cap. 4. under the Words Limited and appointed. Hob. 136. Also relating to Colleges and Schools, with the King's Licence. 7 & 8 W. 3. 37.

Lands of 35 l. per Annum devised to Trustees and their Heirs, for so much for a Preacher, so much for a School, so much for an Usher, and so much apiece to Four poor People, which amounted to 35 l. which was then the Annual Profits of the Land. Afterwards the Land came to be 100 l. per Annum: And it was adjudged, That the Annual Profits shall go to the Preacher, School-Master, Usher, and poor People, for the Encrease of their Salary, and Maintenance of a greater Number of Poor: And that the Devisees shall have nothing of it.

Rep. 130. b. 131. a.

A Devise to a Corporation to Charitable Uses, is good.

Stat. 43 Eliz. cap. 4.

7 & 8 W. 3. cap. 37.

Lands devised to Charitable Uses, the Rents are increased.

The Trustees shall not have the Overplus.

shall have nothing of it.



# Colours.

See First Part 159.

Colours, *Quia*.

**C**olour, is a feigned Action, which the Defendant of a Plaintiff useth in his Bar, when an Action of Trespasse or an Affize is brought against him in which he gives the Demandant or Plaintiff a Show that he hath a good Cause of Action; whereas in Truth he hath not, but only a Colour and Face of a Cause: And is used, to the end that the Determination of the Action should be by the Judges, and not by the Jury; and therefore Colour ought to be Matter of Law, or doubtful to the Lay-Gents.

What Qualities it ought to have.

Every Colour ought to have the Qualities following:

1. It ought to be doubtful to the Lay-Gents. As for Instance; Where the Defendant says, That the Plaintiff claims by Colour of a Deed of Feoffment, where nothing passed by the Deed: This Colour is a good Colour, it being a Doubt to the Lay-Gents, whether the Land passeth by this Feoffment with Livery or no. 10 Rep. 88. a, b. and so to the End.

2. Colour, as Colour, ought to have Continuance, although it want Effect. As for Instance; Where the Defendant gives Colour, by Colour of a Deed of Demise to the Plaintiff for the Life of 3. S. who before the Trespasse was dead: This is not any Colour; for it doth not continue. But he ought to say, That he claims, by Virtue of a Deed of Demise made to him for his Life, where nothing passed by that Deed.

Ought to be such as, if it were effectual, would maintain the Nature of the Action.

3. It ought to be such Colour that if it were effectual, would maintain the Nature of the Action; as Affize, to give Colour of Freehold, &c. Dr. Leyseild's Case, 10 Rep. 91.

The Reason of giving Colour in Trespas is, for that the Defendant's Plea may not amount to the General Issue: But if a Man justifies his Entry for such a Cause as binds the Plaintiff or his Blood for ever, he shall not give any Colour. But if a Man

pleads a Descent in Bar, he must give Colour: *Because this binds the Possession, and not the Right; so that when the Matter of the Plea bars the Plaintiff of his Right, no Colour must be given.* 90, 91. Dy. 112. Pl. 48, 249. Pl. 71, Kelw. 74. a.

Also when the Defendant entitles himself by the Plaintiff, no Colour is to be given.

Also when a Man pleads to the Writ, or to the Action of the Writ, no Colour is to be given.

Also he who justifies for Tythes, shall not give Colour; for although by Person severs them from the Nine Tithes, yet they belong to the Parson.

Rep. 91. a.

Where the Defendants justify as Servants, no Colour ought to be given to the Plaintiff. *Lutw. 1343.*

Rep. 91. a. b. 92. C.

The Reason of giving Colour.

Where Colour to be given, and where not.

When the Defendant entitles himself by the Plaintiff, no Colour is to be given.

Nor when the Defendant pleads to the Writ, or to the Action of the Writ.

Nor for a Justification for Tythes.

Nor where the Defendants justify as Servants.

# Contribution.

## See Audita Querela.

**Contribution. Quid.**

**C**ontribution is in two Cases viz. First, Where there are several Partners, and he who married the Eldest daughter the Suit to the Lord, then he shall have his Contributione facienda. The other is in Case of a Stranger or Recognizance, where Execution is sued against the Heir, only he shall not have Contribution against a Purchasor, but against another Heir he shall; so one Purchasor shall have Contribution against other Purchasors and the Heir also.

Where the Heir of the Conuzor shall have Contribution, and where not.

One Purchasor shall have it against another, and against an Heir.

The Conuzors shall be equally charged.

Heir of any of them shall not have greater Privilege in Law than the Conuzor himself. 3 Rep. 13. 14.

Where Feoffee shall have an *Audita Querela* for Contribution:

But the Conuzor shall not.

In what Cases the Heir of the Conuzor of him against whom Judgment is given shall have Contribution, and shall not be solely charged and in what Cases he shall. 3 Rep. 12.

One Purchasor shall have Contribution against another, and against the Heir of the Conuzee also. 3 Rep. 12. b. 13.

The Conuzors themselves shall be equally charged, and one of them shall not be solely extended; also the

Every Feoffee shall have an *Audita Querela* against the Conuzor, to make him Contributory to their Charge. Execution is sued solely against them yet he shall never have an *Audita Querela* against any of them, to make them Contributory to him. 1 Plow. 32. b. *Rosse and Pope.*



If A. mortgages Lands for 1000 l.  
and then devises to B. for Life. Re-  
mainder to C. in Fee, C. may compel  
B. to pay his Share of Mortgage-Mo-  
ney. 1 Chanc. Cases, 224. viz. The Tenant for Life One Third,  
the Remainder to Fee Two Thirds.

How Devisee shall con-  
tribute to pay off Mort-  
gage-Money.

Chanc. Cases, 271.

# Charge.

Charge, is by granting of a Rent  
out of Land, or else to charge  
with some other Matter, which

It is a Maxim in Law, That all  
Fee-Simple Lands may be charged one  
way or other. *1st. Sec. 648.*  
Where a Charge made by Te-  
nant in Tail, in Preservation or Sup-  
port of the Estate Tail, shall bind the  
Issue. *Cro. Jac. 428.*

Charge, *Quia* there  
it shall be liable and

All Fee-Simple Lands  
may be charged.

What Charges shall bind  
an Heir in Tail.

How Devise shall con-  
sist to pay off  
Bare Money.

# Conspiracy,

See Action.

Conspiracy, *Quid.*

Conspiracy, is an Agreement of  
Men to do an Evil Thing; as  
falsely to indict a Man of Felony, or other Crime: And  
there must be two or more concerned in it.

When a Grand Inquest of them-  
selves indicts one of Murder or Fe-  
lony, and after the Party is acquitted,  
yet no Conspiracy lies for him who  
is acquitted against the Indictors.

Because they are returned by the Sheriff by Process of Law to  
make Inquiry of Offences upon their Oaths, and it is for the  
Service of the King and Commonwealth. 12 Rep. 23.

Case lies, for maliciously  
prosecuting of an Infor-  
mation of Battery in the  
Clerk of the Crown's  
Name.

Case lies, for maliciously prosecu-  
ting of an Information in the Name  
of Sir Samuel Astry for a Battery, where  
in the now Plaintiff, then Defendant  
was found Not Guilty. Pas. 35 Car. 2.  
B. R. Styles Rep. 424. 3 Lev. 140.

So for prosecuting an  
Indictment, which was  
quash'd.

Do also it lies, for prosecuting of  
an ill, false, and malicious Indictment  
which was quash'd. Vide Postea.  
lies not where the Defendant was

acquitted upon an ill Indictment, and why.

Case lies, for maliciously  
and falsely accusing of the  
Plaintiff of Felony, and  
preferring of an Indict-  
ment, which was found  
Ignoramus.

Case lies, for maliciously and falsely  
accusing the Plaintiff of Felony, and  
preferring of a Bill of Indictment  
against him at the Assizes, whereupon  
it was found Ignoramus. 1 Rel. Ab.  
111. See Raym. 176. 1 Vent. 12, 13.  
19. 1 Sand. 228. It was said in

Declaration, That the Defendant caused him to be indicted,  
and that the Jury said, *Quod ignoramus*; and said, That it was

a good

good Declaration, and need not to be *Ignoramus*. 2 Jones

If a Man brings an Action on the  
 case, for maliciously causing of him  
 to be indicted of an Offence, and pro-  
 secuting of it until he was *Legitimo modo acquietatus*; if the  
 indictment was not good, an Action doth not lie, for he was  
 not *Legitimo modo acquietatus*. Hill, 8 Car. in B. R. between  
 Jones and Lines: And 3 Leon. 139, 140. A Declaration was  
 held good where it was only said,  
*quisque acquietatus fuit*, without  
 saying of *Inde*, or *De premissis*. Telv.

A Declaration held good,  
 without saying, *Inde ac-*  
*quietatus*, or *De premissis*.

The Words, *Falso & Malitiose*. are  
 absolutely necessary in these Declara-  
 tions. Danv. 208. See Danv. 213.

There must be the Words  
*Falso & Malitiose*.

A Writ of Conspiracy lies for  
 that is indicted of a Trespass,  
 and acquitted, tho' it was not of Fe-  
 lony. 3 Ass. 13. 3 Leon. 140.

It lies for an Acquittal  
 upon an Indictment of  
 Trespass.

Where no Action of Conspiracy  
 against Two, no Action of the  
 same lies against One. 2 Bulstr. 270,

Case lies not where Con-  
 spiracy doth not lie.

An Action lies not against a Ju-  
 stice of the Peace, who sends out his  
 warrant upon a false Accusation;  
 it lies, if he make it out without  
 Accusation. 1 Leon. 187,

Where it lies against a  
 Justice of the Peace, and  
 where not.

It lies for falsely and maliciously  
 bringing of a Church-Warden into the  
 Spiritual Court, and excommunica-  
 tion of him for not rendring of an  
 account, when he had done it. Raym. 418.

For a false and malicious  
 Citation into the Spiritual  
 Court.

If a Man hath good Cause of Sus-  
 picion that a Felony is committed,  
 and that J. S. is guilty of it, and  
 causes him to be indicted; though no

No Action lies where  
 done in Prosecution of Ju-  
 stice.

felony was committed, yet no Action lies, because it was  
 done in Prosecution of Justice. 1 Rol. R. 438, 439. But if  
 he imposes the Crime of Felony, where no Felony was com-  
 mitted, and maliciously causes him to be arrested for it; Case  
 lies upon such a Declaration, without alledging of any par-  
 ticular Felony of which he was accused. 1 Roll. Abr. 43. Pl. 3,  
 Pl. 7.

A probable



## Conspiracy.

**Where a probable Cause  
will not excuse an Action.**

brought an Action, the  
cious. 2. Med. 306.

A probable Cause will not excuse a Man for indicting of another of a Treipsals; for since he might have

Indictment will be taken to be Made

A Declaration was  
Carried in B.R. between  
John and his, for he was

There must be the Words  
Falsely Made

I have no objection to your  
using the material as you see fit.

Case lies not where Con-  
fessory doth not lie.

Where is the place, and  
where is the place, and  
where is the place, and

For a tale and malicious  
Citation into the Spiritual  
Court.

100-443887-100

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slender D.

...acquainted, tho' it was not of the  
...that is indeed a Tripoli  
...of Complicity lies for

Thus no Action of Conspiracy  
against Two no Action of the  
same against One. a Barr. 270.

**Custom**

and Court, and excommunicated  
of a Church Warden for the  
lies for false and maliciously

A man with good taste of suf-

was compared, yet no

and malnutrition can be due to

# Custom

Custom, See { 1st Part 159.  
Prescription.

Custom, when  
mon Right, and Rule  
of the Content of our  
put into Practice.

reasonable Commencement

2. It ought to be Certain, and not Ambiguous.

A Custom ought to be  
positively alledged.

**A Custom alleged to be in a particular Parcel of Land.**

A Custom alledged to  
be in a Parish, not good.

**Custom in Copyholders,  
and Prescription in Free-  
holders.**

**Custom for Inhabitants  
of a Parish to dance upon  
the Plaintiff's Land.**

## Custom

Custom to pay a Year's Value for a Fine for Copyhold Land.

Customs unreasonable, not to be allowed.

Customs ought to be laid in the Land, and ought to be reasonable; for those which are unreasonable, are not good, nor to be allowed. For the Common Law is grounded upon Reason, and allows not unreasonable Things. 6 Rep. 60.

For a Common Bakehouse, held good.

Customs against Common Right, and Rule of the Law, held good.

Case in London lies for calling a Woman Whore.

so is the common Practice. Now also it lieth for a Lodge, for she comes within the Custom, which reacheth to all the inhabitants. *Quod Nota*. But she must be an Inhabitant within London; for by the Common Law, it lies not but only upon the Custom.

Action lies upon the Custom of Bristol, upon a *Concessit solvere*.

upon a *Concessit solvere*, is maintainable there; and so it is by the Custom of London. This may be thought reasonable there in regard of a ready way used in Bargaining and Commerce one with another.

The Custom for Goods taken at Sea as Prize.

the Ship, before the Ship so taken be condemned for Prize in the Court of Admiralty. For before the Ship be condemned, it appears not judicially that the Goods are Prize-Goods, though she be brought in as a Prize.

## Custom.

Custom to pay a Year's Value for a Fine for Copyhold Land, is good, tho' objected that the Value is uncertain. 3 Lev. 255.

Customs ought to be laid in the Land, and ought to be reasonable; for those which are unreasonable, are not

good, nor to be allowed. For the Common Law is grounded upon Reason, and allows not unreasonable Things. 6 Rep. 60.

A Custom for a Common Bakehouse in a Town, held good. 8 Rep. 125. b.

Several Customs against Common Right, and the Rule of the Law, yet held good. 8 Rep. 126, 127.

By the Custom of London, an Action on the Case doth lie against one, for calling of a Woman Whore, and

so is the common Practice. Now also it lieth for a Lodge, for she comes within the Custom, which reacheth to all the inhabitants. *Quod Nota*. But she must be an Inhabitant within London; for by the Common Law, it lies not but only upon the Custom.

By a Custom of the City of Bristol, an Action that is brought against one upon a bare Promise of the Party, that he would pay the Money, is maintainable there; and so it is by the Custom of London. This may be thought reasonable there in regard of a ready way used in Bargaining and Commerce one with another.

By a Custom used at Sea, the Goods in a Ship, which is taken as Prize, ought not to be taken out of the Ship, before the Ship so taken be condemned for Prize in the Court of Admiralty. For before the Ship be condemned, it appears not judicially that the Goods are Prize-Goods, though she be brought in as a Prize.

This may be thought reasonable there in regard of a ready way used in Bargaining and Commerce one with another.

The Custom for Goods taken at Sea as Prize.

the Ship, before the Ship so taken be condemned for Prize in the Court of Admiralty. For before the Ship be condemned, it appears not judicially that the Goods are Prize-Goods, though she be brought in as a Prize.

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Customs



# Customs due to the King.

**What manner of Duties, Customs, and Subsidies are, and their Original.** What Customs are due to the Crown by Inheritance for Merchandize, and what are due of Common Right, and not by Be-  
 volence, or Act of Parliament; and when the Petit and New Customs payable by Merchant-Strangers began, and how Prifage of Wines is due, &c.

What Customs are due to the King by Inheritance.

When the Petit Customs began.

See *Davi's Rep.* 8, 9.

The Customs, called *Customs Anti-*  
 que, for Wooll, Woolfels, and Leather, were granted by Parliament to King Edward the First, in the Third Year of his Reign, and was no Duty at the Common Law.  
*Laugh. R.* 161, 162, 163.

The *Customs Antique* when granted by Parliament. 3 E. 1.

**Compulsion, See Evidence,**  
 1st Part 162.

Council,

# Council, and Coun- cellor.

Council and Councillor, See 1st Part 162.  
Indictment.

Council to be allowed  
for the Person indicted:  
7 Ed. cap. 3.

whole Indictment, but not the Names of the Witnesses, Five  
Days at least before the Tryal, paying for the same, not ex-  
ceeding 5 s. and shall be allowed to make his full Defence by  
Council, not exceeding Two to be assigned by the Court.

What Witnesses to Overt-  
Acts in Treason.

and another Witness to another Overt-Act of the same Tre-  
son.

When to be presented.

What Cases Judgment  
shall not be stay'd after a  
Verdict upon Indictments.

BY the Statute of 7 W. cap. 3. any  
Person accused and indicted for  
High-Treason and Misprision of Tre-  
son, may demand a Copy of the

That there shall be at least Two  
Witnesses, either both to the same  
Overt-Act, or one to one Overt-Act  
and another Overt-Act of the same Tre-  
son.

Indictments of Treason are to be  
presented within Three Years after  
the Offence committed.

No Indictment shall be qualified  
or Judgment stayed, after Verdict for  
Miswriting, Mispelling, or Improper  
Latin; but a Writ of Error may be  
brought thereupon.

Count, See Declarations.

County

# County

See First Part 163.

**A** House or Land may be Extra-Parochial in a County, but they must be in some County. For if they should not be within the County, and subject to the Laws of the County, what Power or Laws could they be under. And without Laws, and Officers to put them in Execution, there can be no Subsistence.

Tho' Land may be Extra-Parochial, it must be in some County.

Where a County is indicted for the Repairs of a Bridge, it is not sufficient for them to plead Not Guilty; but they must shew who is bound to repair, and Traverse that they ought to repair.

How a County must plead, where indicted for the Repairs of a Bridge.

1. A Constable may take an Oath into Custody without a Warrant; but if a Person be seized by a Constable upon suspicion of Felony, and the Constable take him into his Custody, and carry him to a Justice of the Peace, here the Constable cannot do this without a Warrant from a Justice of the Peace for that purpose. Where a Constable may carry the Prisoner before what Justice he will.

**Constable.**



# Constable.

Constable, See Leet.  
Actions.

Constables; what.

Of Constables, there are two Sorts: High Constables, who are Constables of an Hundred; and Petty Constables, chosen yearly at the Court Leets, for Tiths and Tolls within their Jurisdictions.

A Constable ought to be *Idoneus* *Homo*.

Or discharged.

Where a Constable may take an Offender into Custody without a Warrant.

Where a Constable cannot.

Where a Warrant is directed to a Constable to bring the Prisoner before him who made the Warrant, any other Justice, the Constable may carry him before what Justice he pleases.

A Constable may carry his Prisoner before what Justice he will.

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Of Constables, there are two Sorts: High Constables, who are Constables of an Hundred; and Petty Constables, chosen yearly at the Court Leets, for Tiths and Tolls within their Jurisdictions.

A Constable ought to be *Idoneus* *Homo*; that is, a Man of Honesty, Knowledge, and Ability. 8 Rep. 41. b. And if one be elected Constable who is not *Idoneus*, he may be by the Law discharged of his Office, and another put in his Place. 8 Rep. 42. a.

A Constable may, without a Warrant, take into his Custody any Person whom he sees committing a Felony, or Breach of the Peace. But if a Person be seized by a Stranger upon Suspicion of Felony, and the Person who seized the Prisoner sends to a Constable to take him into his Custody, and carry him to a Justice of the Peace; here the Constable cannot do this without a Warrant from a Justice of the Peace for that Purpose. *Hil. 1 Annæ.*

Where a Warrant is directed to a Constable to bring the Prisoner before him who made the Warrant, any other Justice, the Constable may carry him before what Justice he pleases. 5 Rep. 59. a. b.

# Constable.

241

The Statute of 21 Jac. cap. 15.

authorizes Constables, and their Affili-  
ants, to plead the General Issue, and  
if they recover it, gives them double  
Costs; and also they must not be sued out of the proper  
County where the Fact was committed.

The Privileges given to  
Constables, by the  
21 Jac. cap. 15.

Contingency. See Title Rent.

Church-Wardens are Officers  
chosen yearly by the Parish  
and Parsonage, according to the  
Custom of every Liberty, to be to and take Care  
the Church and Church-wardens.

A Church-Warden, how  
chosen, and his Duty.

Church-Wardens cannot  
be sued to have Lands to them  
their Successors, for they are not  
Corporation to have Lands but only for the Goods of the  
Church. Wardens.

Church-Wardens cannot  
be sued to have Lands.

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# Church-Wardens.

## See Wardens of the Church.

A Church-Warden, how chosen, and his Duty.

Custom of every several Place, to see to and take Care of the Church and Church-yard. Terms of the Law, 68. a.

Church-Wardens cannot prescribe to have Lands.

Corporation to have Lands, but only for the Goods of the Church. March 66.

Parson and Church-Wardens in London may purchase.

They cannot give away the Goods of the Church.

The Organs belong to the Parishioners, not to the Parson.

They may receive Goods for the Benefit of the Church, but can do nothing to its Disadvantage.

Parishioners may dispose of the Goods of the Church.

such Personal Things as belong to the Church. 1 Roll. A. 121. Pl. 9.

Church-Wardens, are Officers chosen yearly by the Minister and Parishioners, according to the Custom of every several Place, to see to and take Care of the Church and Church-yard. Terms of the Law, 68. a.

Church-Wardens cannot prescribe to have Lands to them and their Successors, for they are not an

But in London, the Parson and Church-Wardens are a Corporation and may purchase and demise Lands. Cro. Jac. 532.

A Gift by them of Goods in their Custody, without the Consent of the Vestry, is void. Rol. Rep. Metbold & Win's Case.

The Church-Wardens may bring Trespals for taking of the Organs out of the Church, for they belong to the Parishioners, and not to the Parson. 1 Rol. R. 69.

Although Church-Wardens have Power to receive Goods for the Benefit of the Church, yet they have no Power to do any Thing to its Disadvantage. Telv. 173.

They may, by the Agreement of the Parishioners, take a ruinous Building and new found it, for the Parishioners are a Corporation for the Disposal



Church-Wardens may bring Trespass for a Bell taken out of the Church in the Time of their Predecessors; but they must lay it *Ad Dampnum Parochianorum*. Cro. El. 145, 179. But for Goods taken in their own Time, they may lay it *Ad Dampnum Ipsorum*, or *Ad Dampnum Parochianorum*. *Ibid.*

If they bring Account against their Predecessor for a Bell, &c. it must not be laid to be *Bona Ecclesie*, but *Bona Parochianorum*. 1 Mod. 65.

Church-Wardens may bring Trespass for a Bell taken out of the Church in the Time of their Predecessors; but their Predecessors can have no Action: Because their Time is past.

Two Church-Wardens recover Costs, one of them cannot release: Because they have nothing but to the Use of the Parish. Cro. Jac. 235.

Church-Wardens may take off the Hat from a Person who sits irreverently with it upon his Head in the Church in the Time of Divine Service, and refuses to pull it off. 1 Lev. 196.

How old and new Church-Wardens must bring their Actions.

But for Goods taken *Ad Dampnum Ipsorum*, or

Where *Bona Ecclesie*, and where *Prochianorum*.

Where the new, and not the old Church-Wardens, must bring their Action.

Cro. El. 145.

One Church-Warden cannot release Costs; and why.

They may pull off a Hat in the Church in the Time of Divine Service.

# Commission, and Commissioners,

See First Part 165.

By what Commission a Judge of Assize tries a Cause.

**T**he *Distingas Juratores* is not the Commission of the Judge to try the Cause, but it is the Commission of Assize that gives him an Authority to hold Plea of Actions.

Church

# in Church, and

**T**HE Church and Church-yard are in Law the Soil and Freehold of the Parson. Hob. 69. and yet the Ordinary hath the Authority of Seating therein. Clergy-Mens Law, 301.

Whose is the Church, and Church-yard.

Authority of Seating

An Ejectment lies for the Impro-  
riator, *pro quadam Domo Vocat'* the  
Church of, &c. *Grant's Case*,  
*Anna.*

Ejectment lies for a  
Church.

The Parishioners are to repair the  
Body of the Church, and fence the  
Church-yard. Clergy-Mens Law, 301.

Who are to repair the  
Church, and Church-yard.

The Disposal of the Pews in the  
Body, or an Isle or Chapel adjoining  
the Body, and the Reparations of  
them, belong to the Ordinary. Hob. 69.

Who hath the Disposal  
of the Pews in the Church.

No Man can challenge a Seat in the  
Church, without a special Reason, as  
prescribing to repair. Hob. 69.

How it is by Prescrip-  
tion.

A Man may not only claim a Seat  
in the Church by Prescription, as pe-  
culiar to him, but the upper Part of  
a Seat; and an Action upon the Case  
it lies at the Common Law. *Noy* 129.

Case lies for a Seat, or  
upper Part of a Seat, by  
Prescription.



# Commitment,

**Commitment, See** { First Part 165.  
                                  { Contempt.

**Commitment, Quid.**

and neber done without good Cause for it.

Where there shall be a Commitment for a Contempt.

ted in Court, or by Affidavit filed in Court, or by the Parties (upon his Examination to Interrogatories) being reported to be in Contempt: So tender is the Law of inflicting Punishment upon any, without an apparent Cause.

**Commitment of Prisoners.**

**How the Commitment of Prisoners is to be. See Title Prisoners.**

**Commitment of a Man to Prison,** is the Act of the Court

None shall be committed for Contempt done to the Court, if the Contempt doth not clearly appear to the Court, either by an Act committed

If the Action That the shall con and yet Plaintiff following hath his ax'd him Entry an the Lesson or Refu Court w disobeyin If a Judgmen and allow to the Ar Bail put or with This is a Notice be and Bail

How the Commitment of Prisoners is to be. See Title Prisoners.

Following to report. The de A shall may not only claim a seat in the Church by Resignation, as he is to him, but the upper part of the seat; and an Action upon the Case is to be the Common Law.

# Contempt.

Contempt, See { First Part 166.  
Attachment.  
Commitment.  
Ejectment.

**Contempt, is a Disobedience to the Rules and Orders of a Court which hath Power to punish such Offence.**

*Contempt, Quid.*

If the Court makes a Rule in an Action of Trespass and Ejectment, That the Defendant in the Action shall confess Lease, Entry and Ouster; and yet at the Tryal the Defendant will not do it, so that the Plaintiff thereupon becomes Nonsuit: The Plaintiff the Term following, upon the Return of the *Postea*, and Rules given, hath his Judgment against the Casual Ejector, and his Costs taxed him by the Secondary, upon his Rule to confess Lease, Entry and Ouster: And upon a Demand made of the Costs of the Lessor by one who hath Authority for it, and his Neglect or Refusal of Payment, upon Affidavit made thereof, this Court will grant an Attachment of Contempt against him, for disobeying the Rule of the Court.

Attachment lies for not paying the Costs upon a Nonsuit in Ejectment.

If a Writ of Error to reverse a Judgment in this Court is brought and allowed, and Notice given of it to the Attorney of the other Side, and Bail put in, and the Attorney doth notwithstanding sue out Execution:

It is a Contempt for an Attorney to make out Execution after a Writ of Error brought, and Notice given of it.

This is a Contempt to this Court. But it is no Contempt, if Notice be not given to the Attorney of the Writ of Error brought, and Bail put in, as the Statute requires.

# Contempt.

When the Writ of Error is to be allowed, and when Bail to be put in.

Formerly the Practice was, That after a Writ of Error shewn to the adverse Attorney, the Attorney which brings the Writ had Four Days Time to allow it, after shewn : And after he had allowed it, he had Four Days Time to put in good Bail. But this Rule is altered, and at this Time it is now insisted upon to be allowed presently, or else it is not to be any Stay of Execution.

Contempt, See Commitment.  
Contempt, See Commitment.  
Contempt, See Commitment.

Attachment lies for not paying the Costs upon a Judgment in Execution.

Contempt is a Disobedience to the Rules and Orders of the Court which hath Power to punish such Offences.

Attachment will not do it, to that the Plaintiff the Term following upon the Return of the Return and Rules given, and his Costs against the Casual Executor, and his Costs to costs less, and upon a Demand made of the Costs of the Judgment upon Affidavit made thereof, this Court will grant an Attachment of Contempt against him, for disobeying the Rule of the Court.

If the Court makes a Rule in an Action of Torts and Ejectment, that the Defendant in the Action shall costs Leads, Entry and Offer, and pay the Costs of the Plaintiff, and upon becoming Insolvent, the Plaintiff thereupon becomes Plaintiff, and the Defendant becomes Defendant, and the Plaintiff's Judgment against the Casual Executor, and his Costs to costs less, and upon a Demand made of the Costs of the Judgment upon Affidavit made thereof, this Court will grant an Attachment of Contempt against him, for disobeying the Rule of the Court.

It is a Contempt for an Attorney to make an Execution after a Writ of Error brought, and Notice given of it.

Writ of Error to reverse a Judgment in this Court is brought and allowed, and Notice given of it to the other Side, and the Attorney doth

## Condition.

But it is no Contempt, if a Contempt to this Court, when he is not given to the Attorney of the Writ of Error brought, but at the Statute requires

that a Writ of Error to reverse a Judgment in this Court is brought and allowed, and Notice given of it to the other Side, and the Attorney doth



# Condition.

First Part li 68.

Covenant.

Non Dampnificatus.

Condition. See Pleas.

Replications.

Condition Precedent.

Limitations.

**Condition**, is a Restraint annexed and joined to a Thing; so that by the Non-Performance, or not doing of it, the Party to the Condition shall receive the Prejudice; and by the Performance of it, shall receive the Advantage.

Of Conditions which defeat Estates, see at large. 2 Rep. from 70.

How Conditions of Bonds are to be pleaded, to be performed where Money is to be paid, or some Collateral Matter to be done. Keilm. 74. b.

In Debt upon a Bond, condition'd to save the Plaintiff harmless concerning several Mariners Tickets delivered to the Defendant: The Defendant pleads, That he saved him harmless, and doth not say how. is good upon a General Demurrer, but naught upon a Special Demurrer. Lutw. 428.

Where the Defendant pleads Performance of Articles to a Condition on a Bond, he must plead the whole Articles, and not omit any Part; and then say, *Que sunt* 2 Lev. 117.

The Nature and Effect of a Condition.

Condition is a bond or obligation, which is made between a Person and a Thing, or between a Person and a Person, so that by the Non-Performance, or not doing of it, the Party to the Condition shall receive the Prejudice; and by the Performance of it, shall receive the Advantage.

Of Conditions which defeat Estates.

How Conditions, of Bonds are to be pleaded, where Money is to be paid, or some Collateral Matter to be done.

Debt upon a Bond to save harmless; he pleads Saved, and says not how.

How to plead Performance of Articles.

A

A Condition to exhibit a true Inventory, Defendant pleads *Performavit Omnia*, it is naught.

What shall be a Performance of a Condition, to make such further Assurance as Council shall advise.

given in Evidence, That a Draught was advised, and drawn by a Scrivener, and held to be a Performance of the Condition, *per Chief Justice Scroggs*.

A Condition of a Bond, not to trade in a particular Place, is void.

Condition of a Bond to refrain Trade, is void.

Difference between a Bond void by Statute, and by Common Law.

Condition on which it was given, the Bond may be avoided, but nothing contrary to a Bond can be averred to make it void.

A Condition in the Disjunctive, if suspended in Part, is suspended in the Whole.

suspended by meddling with the Land; and the other, Collateral Matter to the Land, which cannot be suspended by a Reversion: Yet they are not several, but one entire Condition which refers to Two Branches; and therefore being suspended in Part, is suspended in the Whole. 4 Rep. 52. b.

Condition in the Disjunctive.

One Part becomes impossible, by the Act of God.

A Bond was conditioned to exhibit a true Inventory, the Defendant pleads *quod Performavit Omnia*; this is an ill Plea: Because he ought to plead a special Performance. M. 8 W.

Where the Condition of the Bond is, to make such further Assurance as Council shall advise, (and doth not say, As Council learned in the Law shall advise) upon an Issue of Concilium non dedit Advisamentum; it was

A Condition, not to trade in a particular Place, is void; but a Promise upon a good Consideration for it, is good. 3 Lev. 242, 243.

A Condition of a Bond, not to buy Sheep-Feet, &c. of any other but A. B. and C. D. and not to buy above such a Quantity, is void. Show. Rep.

If a Bond is void by Act of Parliament, though it appears by the Condition to be a good Bond, yet averring in pleading the unlawfulness, the Bond may be avoided. Show. Rep. 3.

Although a Condition comprehends Two several Things in the Disjunctive of Two several Natures, the one, of Rent issuing out of Land incident to the Reversion, and may

Where a Condition of a Bond consists of Two Parts in the Disjunctive, and both Parts are possible at the Time of the Bond, and afterwards one of them becomes impossible by the Act of God: The Obligee is bound

bound to perform the other Part; for the Condition is made for the Benefit of the Obligee, and shall be taken beneficially for him. 5 Rep. 21. b. 22. a. Lutw. 693, 694.

The Condition of a Bond, to make such a sufficient Discharge as A. B. shall think fit: For that A. B. is a stranger to the Condition, and the Condition is for the Benefit of the Obligor; he hath taken upon him to perform it at his Peril, and is bound to procure it to be done. 5 Rep. 23. b.

Upon a Re-demise of Part, altho' there is no Entry by Vertue of the Re-demise; yet the Rent, by Vertue of the Re-demise before any Entry, is suspended. 4 Rep. 52.

A Lease upon Condition that the Lessee or his Assigns shall not alien without Licence; yet when the Lessor licenses the Lessee to alien, he shall never, by Force of the Provision, determine the Term which is absolutely alien'd by his Licence; so far hereby he has dispensed with all Alienations to be made afterwards. 4 Rep. 120.

Where a Lease is made to Three, upon Condition that they, nor any of them, shall not alien without Licence, and afterwards one aliens with Licence, and the others without; adjudged, That the Condition being determined as to one (by the Lessor's Licence) it was determined as to the rest. Rep. 120. a. A Condition being entered, cannot be severed by the Act of the parties. Ibid, 120. b.

The Condition of a Bond is, That a Man shall grant all his Lands in B. the Tenure of J. S. the Defendant may say, That he hath not any Lands there: So if a Man be bound to be consuit in all Actions that he hath in Banco, he may say, That he hath no Action there. But otherwise it is, if the Words of the Condition be Particular, viz. to be non-suited in a Formedon. 2 Rep. 33. b. 34. a.

When a Grantee upon Condition to make an Estate to the Grantor, and no Time limited for it; he shall have during his Life to do it, unless

Condition for a Stranger to do an Act,

Lease upon Condition not to alien without Licence: If the Lessor licenses, it is sufficient for the whole Term.

Condition that they, nor either of them, shall alien without Licence; void as to all who alien with, and the other without Licence, the Condition is determined.

An entire Condition cannot be severed.

The Condition of a Bond to grant all his Lands, where he may say, That he hath no Lands.

Where Things are General, and where Particular.

What Time to perform the Condition, where none is limited.

traffened



hastened by Request: But if the Grantee dies before it is done, it is a Forfeiture of the Condition. 2 Rep. 78. b. 79. a. See much good Matter in the 6 Rep. 30, 31. to this Purpose; and when Local, and when Transitory.

Bonds for Performance of Covenant. 8 & 9 Edw. 1. cap. 10.

How to assign a Breach upon a Bond, for quiet Enjoyment.

How to plead, where some are in the Negative, and some in the Affirmative.

he hath not broke them; performed them.

How, when the Negatives are against Law, and the Affirmatives lawful.

How where some are void, and others not.

that are good, but not for the other. Hob. 13. in Margine.

How it is where the Condition is both in the Conjunctive, and Disjunctive.

How the Law came to be altered in the case of Bonds conditioned for the Performance of Covenants. See Title Covenant.

A Bond was enter'd into, with Condition for quiet Enjoyment; the Defendant pleads, That the Plaintiff enter'd, and might have quietly enjoyed; the Plaintiff replied, That he was outed by J. S. The Replication is naught: Because he did not say that J. S. had a good Title. Vaugh. 121, 122.

When there are in Indentures, Covenants in the Negative for Non-Feazance, and in the Affirmative for Feazance; there the Defendant is to plead specially to the Negatives, and to the Affirmative, that he hath performed them.

When the Negatives are against Law, and the Affirmatives lawful, there he may plead Performance generally; and the Court is to take Notice, that the Negatives are against Law.

When some Covenants are void by the Common Law, and others not void, the Bond stands good for those that are good.

If an Use be limited to certain Persons, until A. shall come from beyond Sea, and attain his Age of 21 Years, or die; if he doth come from beyond Sea, or attain his full Age, the Use ceases. Co. Litt. 225. a.

Conti

# Continuance,

Continuance, See { First Part.  
Elegit.  
Discontinuance.

**Continuance**, is the continuing of the Cause in Court, by an entry upon the Records there for that Purpose.

*Continuance, Quid.*

A Judgment was above 10 Years standing, and an *Elegit* was sued out on it, and executed; but the Judgment was not revived by *Sci' fa'*: the Court was moved to stop the King of the Writ, as being irregular;

An *Elegit* may be continued upon the Judgment-Roll, with a *Vic' non misit Breve*, to save a *Sci' fa'*, altho' no *Elegit* ever sued out.

The Defendant's Council insisting also, That the Plaintiff's Attorney had, after the suing out of the *Elegit*, entered the Continuances of an *Elegit* upon the Roll until the Time of the Execution of the *Elegit*: The Court were of Opinion at first, that there could be no Continuance of an *Elegit*, unless there were an *Elegit* actually sued out (which could not be proved to be sued out in this Case). But the Court having enquired of Sir Samuel Astry, and other the ancient Practicers then present, what the Custom had been in this Case, were informed, that in all other Cases, (except that of an *Elegit* only) the Practice was to sue out the Writ first, and continue it afterwards upon the Roll: But in the Case of an *Elegit*, the Practice was to enter the Continuance of Course, with a *Vic' non misit Breve*. And thereupon the Court declared, That they would not alter the ancient Practice of the Court, and therefore made no Rule in it. *Seymour Mil' & Granvil. Mich. 5 W. & M.* But I have been informed that the Court hath since ruled it otherwise.

Continuances and Essoigns are amendable upon the Roll at any time before Judgment. 3 Lev. 429,

When Continuances and Essoigns are amendable.

The

**How to plead Death of the Plaintiff, *post ultimum Continuacionem*.**

his Hand of the Death of the Plaintiff *post ultimam Contin-*  
*tionem*; and pray'd, That the Court would order the Attorney  
to fill up the Blank in the Roll for the Continuance to that Day.  
But the Court, upon Affidavit made that the Plaintiff was  
alive till about 10 Days in Term, refused to do it. *Roy's Ca.*  
2. *Anne B. Regine.*

2 Anne B. Regine.

The Plaintiff, after a Demurrer  
joined, and before the Concilium-  
died; and upon the Concilium-  
the Defendant's Council had a Plea

Continued, 2nd.

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...the fact that the ...  
...the fact that the ...  
...the fact that the ...

That the Plaintiff's Ar-

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# Confirmation,

See First Part 168.

**C**onfirmation is, when any one who hath Right to Lands makes a Deed to another who hath the Possession of them, or some Estate in them, with intent to enlarge his Estate, or make his Possession perfect.

A Confirmation, what it is.

Every Confirmation is, either *Perpetuus*, *Crescens*, or *Diminuens*, and what they are, and how they operate.

Of Confirmations, and how they operate.

9 Rep. 142. a.

Upon a Confirmation, no new Services or Rent can be reserved.

No new Services or Rent can be reserved.

Dilettet confirms for an Hour, it good for ever. 5 Rep. 81. a. b.

Confirmation for an Hour, is good for ever.

A Confirmation cannot be for a Time, but is as perfect as it can be, notwithstanding the Restriction of Time. Vaugh. 27.

A Confirmation may make a voidable or defeasible Estate good; it cannot work upon an Estate that is void in Law. Co. Lit. 295. b.

It cannot make a void Estate good.

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# Conditions Precedent.

## See Conditions.

**Condition Precedent.**  
A Condition Precedent is, where a Grant, with a Precedent Condition to have a Fee, in what Cases.

**A Condition Precedent is,** where a Grant, upon doing of such Act as is agreed upon, shall have such an Estate, or such a Bargain.

**Condition Precedent must** be first performed.

the Estate, until the Condition is performed. 2 Plow. 483.

**A Grant, with a Precedent Condition to have a Fee, in what Cases.**

may as well be annex'd to an Estate Tail which cannot be merged, as to an Estate for Life or Years which may be merged, by the Accession of a greater Estate: But such Encrease ought to have these four following Incidents. 8 Rep. 57.

**The Four Incidents to the Encreasing of an Estate.**

**I. There ought to be a particular Estate for a Foundation, for the Encrease of a greater Estate to be built upon, which must be Permanent, and not at Will.**

**II. Such particular Estate ought to continue in the Lessee or Grantee, until the Encrease happen.**

**III. It ought to vest at the Time of the Contingency, otherwise it will never vest.**

**IV. The particular Estate and Encrease ought to take effect either by one and the same Instrument, or by several Deeds delivered at the same time. 8 Rep. 75.**

# Coroner.

A Coroner is an Ancient Officer of Trust, chosen at the County Court, and is of great Authority; and upon the Death of the King continues in his Office.

A Coroner, what he is.

A Writ of Assize was directed to the Coroner, because the Sheriff was of Kin to the Defendant: And so to all the rest of the Coroners, because A. B. one of the Coroners, was Servant to the Defendant. *Wym. 1. vers. Domin. Willoughby. 1 Plow. B. a.*

A Writ of Assize directed to the Coroners for Cofinage with the Sheriff.

Also to the rest of the Coroners, for that one of them was the Defendant's Servant.

Where Original or Judicial Writs shall be directed to the Coroners in default of the Sheriff. *Ibid. See the whole Case.*

Where Writs Original or Judicial shall be directed to the Coroners.

A Coroner may commit any Person to Prison, who is by his Inquisition found Guilty of the Death of any Person.

Where he may commit to Prison.

A Flight found by the Coroners Enquest is final, as to the Forfeiture of Goods. *Hob. 318. Because not traversable. 2 Lev. 140.*

A *Fugam fecit* binds the Goods.

A Coroners Enquest return'd, that A. B. *seipsum emergit*, instead of *ergit*, & *sic seipsum murtavit*, and

Where a Coroner's Enquest was traversable.

ought: And per Hale, Anciently the Coroner's Enquest was traversable in this Case, tho' not in a *Fugam fecit*, and the Inquisition was set aside: And the Death ordered to be presented at the next Assizes, and the Inquisition to be travers'd, and tried there. *2 Lev. 140.*



Where not.

How Coroners must act ministerially, and how judicially.

Ministers must all joyn, but as Judges they may divide; but being after a Verdict, the Statute of *Fessables* help'd it, by the Words of imperfect and insufficient Returns by Sheriffs or other Officers. *Hob. 70. See 3 Lev. 399.*

A Coroner's Enquest was travers'd by Executors, upon the finding of a *Felo de se*, not upon a *Fegam fecit*. 2 *Lev. 152.*

A *Venire* was return'd by two Coroners, the *Distringas* by three, where there were then four: This is Error at the Common Law, for Coroners are

## Common Barretor.

What is a Common Barretor.

of Parties, either 8 *Rep. 36, 37. a.*

In Courts.

In the Country.

**H.** In the taking and detaining of Possession of Houses, Lands or Goods, which are in Question or Controversy, either by Force or Subtilty, and Deceit. *Ibidem.*

**III.** By false Invention, and sowing of Rumours, and Reports, making Discord amongst the Neighbours; all which are proved by the Words of the Indictment; which see 8 *Rep. 36, 37.*

A Man who only prosecutes his own Suits, is not a Common Barretor.

Defendant shall have his Costs: But it is he that stirs up Suits amongst his Neighbours is a Barretor. 8 *Co. 37. b. See 3 Mod. 97, 98. 3 Inst. 175.*

A Common Solicitor is a Barretor.

Law, per Coke. *Trin. 14 Jac. Oliver & Blanchflower.*

A Common Barretor, is a common Hoher, and Excitor of Maintainer of Suits, Quarrels in the Country or in Courts.

In Courts of Record and Common Courts, Hundred Courts, and other Inferior Courts. *Ibidem.*

**I.** In Disturbance of the Peace.

If a Man prosecutes an infinite Number of Suits, which are his own proper Suits, this doth not make him a Barretor; for if they are false, the

A Common Solicitor is a Common Barretor, and may be Indicted for it: Because it is no Profession

# Copyhold and Copyholder.

Copyhold and Copyholder, See { First Part 169.  
Forfeiture.  
Tenure.  
Admittances.

A Copyhold Tenant, is he who is admitted Tenant of any Lands within a Manor, that Time of Time have been demised and demisable to such will take the same in Fee, Fee Tail, or for Life, years, or at Will, according to the Custom of the said Manor, by Copy of Court-Roll of the said Manor.

What makes a Copyhold Tenant.

A Copyholder for Life doth forfeit his Copyhold, by committing of voluntary Waste, or cutting down of Timber growing upon the Lands belonging to the Copyhold Tenement. Except it be for Reparations of the Copyhold, and is so for it.

What is a Forfeiture of a Copyhold.

A Court Baron may be held with Seneschallo, as to Admittances; it is usually held before the Stueves, and they are Judges, viz. as to the Causes there tried.

Before whom Courts Baron may be held.

An Admittance of a Copyholder for Life, is an Admittance of him in Remainder; and no Fine is due the Remainder Man, unless by Custom, 3 Lev. 308. 4 Rep. 22. b.

Admission of hirti for Life, is also of him in the Remainder; and no Fine due sans Custom.

Assignees

Assignees of a Reversion of Copyhold, are within  
32 H. 8. cap. 34.

Copyholders alledge a Custom, and Freeholders prescribe.

Copyholder for Life is attained, who shall have the Forfeiture so long as he lives.

Life in Remainder. 3 Lev. 94. But 9 Rep. 107. a. that the Lord shall retain it during the Life of him who commits the Forfeiture, and he in Remainder shall not enter.

Remainder Man may bring Case against Tenant for Life, who commits Waste.

Fine certain must be rendered before the Admission.

Tenant, and then set the Fine: The Reasonableness whereof

Otherwise, where it is uncertain, and who are Judges of it.

Land, and for Non-payment of an unreasonable Fine, the Lord cannot enter. 3 Mod. 133. 4 Rep. 27. b. 28. a. 135.

The Trees are the Lord's.

may carry them away, or bring Trover for them: For when they were standing, they were the Lord's, and the cutting of them down gives the Copyholder no Interest in them.

The Lord cannot cut down all the Trees.

Where the Copyholder may maintain an Action against his Lord.

Assignees of a Reversion of Copyhold Lands shall take Advantage of the Covenants, per Statute 32 H. 8. ca. 34. 3 Lev. 227, 326.

Copyholders must alledge a Custom, and Freeholders prescribe to have *sole & separata Pastura*. 1 Lev. 268. 2 Lev. 178.

Copyholder for Life is attained of Felony, he that hath the next Life enters, then the Copyholder is pardoned: The Forfeiture is not to the Lord, but to the next Tenant for Life.

Case lies for him in Remainder against a Copyholder for Life, who commits Waste. 3 Lev. 128, 130.

Where the Fine is certain, the Lord may refuse to admit without Tender of it: but where it is uncertain, the Lord is first to admit the Fine: The Reasonableness whereof is to be determined by the Judges, before whom the Cause depends, upon a Demurrer, or by a Jury upon Proof of the Yearly Value of the Land.

If a Copyholder for Life cut down Trees, unless for Repairs, and for which there is a Custom, the Lord may bring Trover for them.

The Lord cannot cut down the Timber Trees, but ought to leave sufficient for Reparations. 14 Rep. 107.

A General Action of Trespass lies by a Copyholder of Inheritance against his Lord, *Quare Clausum fregit & borem succidit*, for Custom hath force.



to his Estate against the Lord, they being fix'd to the Lands, and the Copyholder (viz. of Inheritance) may cut them for necessary Repairs. 12 Rep. 68, 69.

Every Copyholder, by the Common-Law, may surrender in Court; and if he can do that by the Common-Law, he may make an Attorney to do it as an incident Thing by the Common-Law. 9 Rep. 75.

It was adjudged, That Copyhold-lands were within the Statute of 194. ca. 16. for Limitation of Entry within 20 Years. 35 Ca. 2. B. R. Hall's Case.

When an Act of Parliament alters the Service, Tenure, or Interest in the Land, or any other Thing in Prejudice to the Lord, Custom of the Manor, or Tenant; there the general Words of Acts of Parliament shall not extend to Copyholds. 3 Rep. 8. 4.

But when an Act is made for the Publick Good, and none of the before-mentioned Prejudices may happen, there Copyholds and Customary Estates are within the Purvey of those Acts. *Ibidem.*

Copyhold Lands are within the Words and Intention of the Act, 4 H. 7. ca. 2. of Fines and Non Claim, and so the Leases for Years. 9 Rep. 105. 4.

Where there is a Copyholder, and by the Custom of the Manor, the Wife that he hath at the Time of his Death shall have her Widow's Estate: this Copyholder after Marriage, and before his Death, surrenders his Estate into the Hands of the Lord, to the Use of another, and dies, altho' the Surrender is not admitted, until after the Death of the Surrenderor, the Wife shall be barr'd: Because she can claim nothing but her Widow's Estate, upon her Husband's dying seized. So that the Husband must be a perfect Copyholder at the Time of his Death, which was not in this Case; because he did Surrender in his Life-time, and therefore had no Estate in Law left in him at the Time of his Death, out of which her Customary Estate could arise. Hill. 5 W. & M. B. R.

Copyholders Surrender by Attorney, good; tho' no Custom.

Copyhold Lands are within the Statute of Limitations, 21 Ja. ca. 16.

What Copyholds are within Acts of Parliament, and when not.

Copyhold Lands within 4 H. 7. ca. 24. of Fines and Non-Claim.

Where the Widow of a Copyholder shall have her Widow's Estate. And where not.

The Husband must die seized.

Where a Woman, who hath a Widow's Estate, sows the Land, and marries, the Lord shall have the Corn,

Because the Estate determined by her own Act, viz. The taking of the Husband. 5 Rep. 116. a.

Where a Copyholder may prescribe against his Lord, and where not.

What Acts of the Disseisor are good, and what not, as to Grants and Admittances.

Copyholder died without Heir, these Grants shall not bind him who hath the Right after he hath recontinued the Manor; but such Admittances, as a Disseisor makes to the Heir of a Copyholder of the Manor, are good; because it is a Thing of Necessity. 1 Rep. 140. b. 4 Rep. 23. b. 24. a. So Note, The Difference between a Grant and Admittance.

What Estate a Copyholder in Fee hath at this Day.

his Estate, that by the Custom of the Manor it is descendable, and his Heirs shall inherit, and an Heir of a Copyholder may

What Action he may bring.

Where he must sue by Petition to the Lord.

Cause reverse the Judgment. 4 Rep. 21. a. b. 22. a. 23. a.

Where he may have Trespass against his Lord.

Refusing to perform his Services, is a Forfeiture.

A Copyholder's Widow, who hath an Estate for her Life during her Widowhood, sows the Land, and then takes Husband: The Lord shall have the Corn, and not the Husband.

Where a Copyholder may prescribe against his Lord, and where not. Keilw. 76. a. 77. a.

If a Disseisor, or other Person, having a defeasible Title in a Manor, grants a voluntary Estate by Copy, as if the Copyhold was forfeited to him, or escheated to him; or if the

Altho' a Copyholder in Fee hath but an Estate at the Will of the Lord, *Secundum Consuetudinem Manerii*, yet Custom hath so fixed and established

bring a Pleint in the Nature of an Assize of Mortdaucesster in the Lord's Court: And upon a Recovery there a Writ of false Judgment doth not lie; but the Remedy is by Petition to the Lord, and he may if there be

Also if a Copyholder paying his Services be ejected by his Lord, he shall have Trespass against him. 4 Rep. 22. a.

But if a Copyholder refuses to make and perform his Services, it is a Breach of the Custom, and a Forfeiture of his Estate. 4 Rep. 21. b.

When Custom hath made such inheritances that the Land shall be Descendable, the Law shall direct the Descent according to the Rules of the Common Law, as Inheritance to every Descendable Estate, and there shall be a *Possessio Fratris*, but such inheritances shall nor have any other collateral Qualities which do not concern the Descent of the Inheritance, nor other Inheritances of the Common Law; and therefore such Inheritances shall nor be Assets to bind the Heir, nor the Wife be endowed, nor a Tenancy by Curtesie; nor shall a Descendant take away the Entry, &c. unless there are particular Customs for these Matters. 4 Rep. 22.

23. a.

The Heir of a Copyholder in Fee may enter, and take the Profits before Admittance, and his Actual Possession before Admittance shall make a *Possessio Fratris*; if there be a Custom for it, he may also surrender before Admittance: But this shall not prejudice the Lord of his Fine due upon the Descent. 4 Rep. 22. b. g. a. But he cannot bring Trespass before Admittance. *Ibid.*

How the Heir of a Copyholder may plead his Title *per Descent*. Rep. 22. b. 24. b.

If a Copyholder for Life surrenders to another in Fee, it is no Forfeiture, for this passes by Surrender to the Lord, and not by Livery. 4 Rep. 23.

If the Custom be to grant Copyhold Lands in Fee, they may be granted in Tail, or for Life also. Rep. 23. a.

When a Surrender is made to the Use of a Will, the Fee-Simple remains in the Surrenderor, and not in the Lord. 4 Rep. 23. 28. b.

How Descent of the Lands shall be.

Common Law, as In

*Possessio Fratris*.

Shall nor be Assets.

Nor Tenant by Curtesie.

Nor Dower.

Nor Descent to Toll Entry.

4 Rep. 22.

Heir of a Copyholder may enter before Admittance, and also surrender: But the Lord shall have his Fine.

the Lord of his Fine

Cannot have Trespass until Admittance.

How the Heir of a Copyholder may plead his Title by Descent.

Copyholder for Life surrenders in Fee, it is no Forfeiture.

Custom to grant Copyhold Lands in Fee, they may be granted in Tail, or for Life.

Upon a Surrender to the Use of a Will, the Fee remains in the Surrenderor.



Copyhold Land must be Part of a Manor, and demised and demisable.

able Time out of Mind. 4 Rep. 24. Copyhold Lands cannot be made at this Day. *Ibid.*

A Copyhold is not destroyed by Severance from the Manor.

How it stands then.

but not Suit of Court or Fine for Alienation; for he cannot Surrender nor Alien, nor can the Feoffee make any Grants or Admittances to it. 4 Rep. 24. b. 25. a. 26. b.

The Heir at Law Releases to the Copyholder in Possession, this is good.

Surrender out of Court must be presented in Court, and to be as it really is.

Lessee of a Copyholder for Years may bring an Ejectment.

The Lord may make Admittances any where out of his Manor, but his Steward cannot.

can the Steward hold a Court out of the Manor but by Custom. 4 Rep. 27. a.

What the Grantee of the Inheritance of the Copyholds may do.

May keep Courts.

4 Rep. 26. b. And this is not like the Case of a Grant of a single Copyhold. 4 Rep. 27. a.

Where the Husband forfeits the Wife's Estate.

Every Copyhold Estate stands on two Pillars: The one, That the Land be Parcel of the Manor; the other, That it be demised and demisable.

Custom hath so fix'd the Estate of a Copyholder, that by the Severance of the Copyhold from the Manor, the Copyhold is not destroyed; but the Copyholder must pay his Rent to the Feoffee, and also Herriots, &c.

The Heir at Law, or he who hath the Right, releases to the Copyholder, who is admitted, and in Possession: This Release is a good Release. 4 Rep. 25. b.

A Surrender out of Court cannot be presented in Court; and if the Surrender is presented to be absolute, whereas it is upon Condition, it is void. 4 Rep. 25. a.

Lessee of a Copyholder for a Year may maintain an Ejectment. 4 Rep. 26.

The Lord of a Manor may make Grants or Admittances of a Copyhold any where out of the Manor, but his Steward cannot. 4 Rep. 26. b. No.

If the Lord grants the Inheritance of his Copyholds to another, the Grantee may hold such Courts for the Copyhold Tenements only as his Lord might have done, and in such Courts there is no need of Freeholders.

Copyholder for Life takes a Husband, who commits Waste contrary to the Custom of the Manor, and dies.

the Wife's Estate is forfeited; but if a Stranger had done it without his Consent, it had not. 4 Rep. 27. a.

¶ The Fines of Copyholders upon Admittance are uncertain, if the Lord exacts unreasonable Fines, and the Copyholder denies Payment, it is Forfeiture, and shall be determined by the Court upon a Denial, or Evidence to a Jury. 4 Rep. 27. b.

Altho' where Fines are uncertain, the Lord assesses a reasonable Fine, and requires the Tenant himself to pay it, he is not bound to pay it presently, but shall have a convenient time for it; but otherwise it is in case of Fines certain. 4 Rep. 28. a. Note. It must be demanded of the Tenant him-

self. Hob. 135. No Fine is due to the Lord, either upon a Surrender or Discent, until Admittance. 4 Rep. 28. a. But if afterwards the Tenant denies to pay the Fine, it is a Forfeiture. *Ibidem*.

Where a Copyholder surrenders the Lord to the Use of another for life, and the Lord makes the Admittance to him and his Heirs; yet who is admitted shall have but for his Life, for he is in by force of the Surrender. 4 Rep. 28. b. 29. b.

A Copyholder may surrender to the Use of his Wife. 4 Rep. 29. b.

Where a Surrender is made out of Court, and the Surrenderor dies before Admittance in Court; yet the Assentment after his Death, by the Custom of the Manor, is good: So if the Surrender is made, yet if it be assented upon good Proof, it is good. 4 Rep. 29. b.

If the Custom of a Manor be to hold for Life, a Grant to a Woman *in Viduitate*, is good. 4 Rep. 30. a.

A Lord of a Manor may retain a Steward by Parol, and he shall continue so until countermanded. 4 Rep. 30. b.

No Forfeiture to refuse Payment of an unreasonable Fine.

A reasonable Time for paying a Fine uncertain, but Fine certain is payable presently.

No Fine is due until Admittance.

Denying Payment is a Forfeiture.

The Copyholder shall be in by the Surrender, not by the Admittance.

May surrender to the Use of his Wife.

A Surrender out of Court: Surrenderor dies before Admittance.

So where Surrenderor dies.

A Grant *durante Viduitate*.

A Steward may be retained by Parol.

A Woman may have Dower by Custom.

What Remedy for her.

What may be granted by Copy.

What will extinguish a Copyhold Estate.

Lord leases it for Years granted by Copy, for or or demisable by Copy :

Where the Lord may re-grant.

How a Copyholder must claim Common in the Soil of a Stranger.

states he hath, have had self and his Tenants at claims Common in Autre

How in the Lord's Soil.

Prescription, what.

Custom, what.

Ancestors, and those whose Estates, &c. But Custom is Local and alledged in no Person. 4 Rep. 31. b. 32. a.

Heir of a Copyholder beyond Sea shall not be barr'd, if he Claim as soon as he comes to England.

land, applies to the Lord for Admittance, which he refuses and held to be no Forfeiture: So likewise in the Case

So in case of Non Compos, Infancy, &c.

A Woman shall by Custom recover Dower of Copyhold Lands, and shall also recover Damgages, but shall not bring Debt for them, but the Remedy must be in the Court of the Manor, or in Chancery. 4 Rep. 30. b.

Underwood, growing upon Parcel of a Manor, may by Custom be granted by Copy, and so may a Fair. 4 Rep. 31. a.

If a Copyhold Estate be forfeited, or escheat to the Lord, or otherwise come into the Lord's Hands: It the or Life, &c. this can never be again during those Estates it is not demised But if the Lord keeps the Lands in his own Hands, or demises them at Will, he may re-grant this at his Pleasure. 4 Rep. 31. a.

When a Copyholder prescribes, he must prescribe in the Name of the Lord of the Manor, viz. That the Lord of the Manor, and all his Ancestors, and those whose Estates he hath, have had Common in Loco in quo, &c. for him self and his Tenants at Will: This is when the Copyholder claims Common in Autre Soil. But when he claims it in the Lord's Soil, then he must alledge That within the Manor there is such a Custom, &c. and not to plead by Way of Prescription, for Prescription is Personal, and made in the Name of certain Persons and their

A Copyholder in Fee dies, his Heir being beyond Sea; the Lord holds Courts, and makes Proclamations, and seizes for want of a Tenant; then the Heir, as soon as he comes to England, applies to the Lord for Admittance, which he refuses and held to be no Forfeiture: So likewise in the Case of an Infant, non sane, Man in Prison, or disseised when beyond Sea.



But if the first Proclamation had been made, and he had afterwards gone beyond Sea, he shall be bound;

But if they went after, it was attach'd, *aliter*.

if a Man be disseised, and afterwards he goes beyond Sea, shall be bound. 8 Rep. 100. e. 101. n.

The Demand of Rent or a Fine, as to make a Forfeiture, must be to the Person of a Copyholder.

What shall be a Forfeiture.

b. 135.

That Non-payment of the Lord's rent upon a Demand, is a Forfeiture.

Non-payment of the Lord's Rent, is a Forfeiture.

Hob. 135. 4 R. 27. a. first and last  
6. 8 R. 92. a. at the Bottom.

Con

# Contract.

(First Part 171.  
 Contract, See } Agreement.  
 } Assumpsit.  
 } Quasi.

A Contract, *Quid.*

A Contract, is a Bargain between Two or more Parties to where one Thing is given for another, which is called *Quid pro quo.*

A Parol-Contract may be dissolved by Parol before broken.

An absolute Parol-Contract may be dissolved by Parol before it is broken, if there be good Consideration for the dissolving of it, else

not: Because it is intended, that it was made upon a good Consideration, and therefore it is not reasonable it should be avoided without good Consideration: But a Promise, without a good Consideration, is but *Nudum Pactum ex quo non oritur Actio.*

Every Contract implies an Assumpsit in Law.

Every Contract doth imply in itself an Assumpsit in Law to perform the Contract; for a Contract will be

to no Purpose, if there were not a Means to enforce the Performance of it.

What Promises are *Nudum Pactum.*

If I do promise to pay a Debt to J. S. which Debt is owing him from G. D. this is *Nudum Pactum*

for want of a Consideration; and if I do not pay it, yet an Action doth not lie against me, for not paying of it according to my Promise: But if I promise to pay it, if J. will forbear to sue G. D. for it till such a Time, or such a Consideration; this is a good Promise, for here is a good Consideration, for this Forbearance may be a Prejudice to J. S. and a Benefit to G. D. and also to him that makes the Promise. But the Statute of Frauds and Perjuries hath since altered the Law in this Case. See for this in Title Agreement,

# Covenant,

Covenant, See { First Part 172.  
Assignment.  
Breach.  
Condition.

**A Covenant, is an Agreement made by Deed in Writing between two or more Persons, and sealed by them, whereby each of them is bound to the other to perform certain Covenants of his Part.**

**Covenant for Rent lies against the Lessee by the Grantor of the Reversion, where there is an express Covenant, and this altho' there had been no Acceptance of the Rent.**

**Covenant for Rent against an Assignee of a Term for Rent, due after Assignments over, is another without Notice, doth not lie. Show. Rep.**

**The Plaintiff brings Covenant as Assignee of the Reversion. Curia by 31 H. 8. cap. 34. the Reversion is vested in the Plaintiff, but not to distress, or bring Debt without Attornment, but he may bring Covenant without Attornment. Woodward vers.**

**Woodward vers. See Cro. Jac. 522. The Statute transfers the Priority of the Debt without more Ceremony, but**

**Distress or Action of Debt is a Remedy incident to the Grant of Reversion at the Common Law, and therefore the Forms required at the Common Law are to be observed. 1 Levins 259, 260. But now**

**Grantor of a Reversion may bring Covenant for Rent against a Lessee.**

**Covenant for Rent lies not against an Assignee of a Term, after his Assignment over, without Notice.**

**Covenant lies for the Assignee of the Reversion by 31 Hen. 8. cap. 34. but cannot bring Debt, or Distress without Attornment.**

**The Reason why.**



Stat. 4 & 5 Anna.

How to assign a Breach  
in an Action upon a Bond  
to perform Covenant.

Covenants, he must assign but one Breach of Covenant in that Action; because if one Breach should be proved, it is enough to maintain his Action, and is a Forfeiture of the whole Penalty. But where a Man brings an Action of Covenant, he may assign Twenty Breaches, if there are

And how in an Action of  
Covenant.

many Covenants: For there is a particular Damage to the Plaintiff for the Breach of every particular Covenant, and a several Issue must be taken upon every several Breach. But since

How the Law came to be  
changed in the Case of  
Bonds, for Performance of  
Covenants.

8 & 9 W. 3. cap. 10.

Bonds, or Penal Sum, for Non-performance of Covenants or Agreements in any Indenture or Writing, the Plaintiff may assign as many Breaches as he shall think fit. And the Jury upon the Tryal shall assess, not only such Damages and Costs as hath heretofore been usually done in such Cases, but also Damages for such of the Breaches as shall prove to be broken: And the like Judgment shall be entred, as heretofore hath been usual in such Actions.

So where Judgment is given for the Plaintiff upon a Demurrer, or *Nisi dicat*, the Plaintiff may suggest as many Breaches as he pleases, upon which a Writ of Enquiry shall go

Judge of Assize, or *Nisi Prius*, to enquire of the Truth of every one of those Breaches, and assess Damages to the Plaintiff which Writ shall be returned by the Judge of Assize, or *Nisi Prius*, to the Court from whence it came, And that if the Defendant shall after such Judgment entred, and before Execution executed, pay into Court where the Action shall be brought

now By a Statute made 4 & 5 Anna. which see in the Title *Attornment* there needs no Attornment.

If one brought formerly an Action of Debt upon an Obligation that was given for Performance of Covenant upon Supposition of a Breach of the

Penalty. But where a Man brings an Action of Covenant, he may assign Twenty Breaches, if there are

a Statute made 8 & 9 W. 3. cap. 10. Entituled, *An Act for the better preventing of frivolous and vexatious Suits* it is enacted, That in all Actions to be prosecuted in any of his Majesty's Courts of Record upon any Bond or

Also if Judgment shall be given for the Plaintiff by Demurrer, or *Nisi dicat*, the Plaintiff may suggest upon the Roll as many Breaches as he shall think fit, upon which a Writ of Enquiry shall go to the Sheriff, to summon a Jury to appear before the

brought, to the Plaintiff's Use, such Damages so assess'd, together with Costs of Suit, there shall then be a Stay of Execution entred upon Record.

Upon Payment of the Money there shall be a Stay of Execution.

Where Satisfaction shall be of the present Damages.

And in case Execution shall be executed, and the Plaintiff is satisfied his Damages and Costs, with reasonable Costs for executing the Execution, then the Body, Goods or Lands, of the Defendant shall be discharged from the Execution, which shall be entred upon Record: But such Judgment shall stand as a Security to answer the Plaintiff, his Executors or Administrators, such Damages as shall or may be sustained for Breach of any Covenant in such Deed, for which the Plaintiff, his Executors or Administrators, may have a Judgment upon such Judgment against the Defendant, or against his Heirs, Tertenants, or his Executors or Administrators, suggesting other Breaches of the said Covenants, and to summon him or them to shew Cause why Execution should not be had and awarded upon the said Judgment, upon which there shall be like Proceedings as was in the Action of Debt upon the said Bond, for assessing of Damages upon Tryals of Issues joined upon such Breaches or Inquiry thereof, upon a Writ to be awarded in manner aforesaid.

of the Defendant shall be of the present Damages.

But Judgment shall stand as a Security to answer the future Breach of any Covenant, for which there may be a *Sci. fa.*

Suggesting the Breaches of the Covenants, and how the Proceedings to be.

And that upon Payment or Satisfaction in manner aforesaid, all further Proceedings on the said Judgment again to be stayed, and so *Toties tanties*. And the Defendant, his Body, Lands or Goods, shall be discharged out of Execution as aforesaid.

Upon Payment or Satisfaction, all further Proceedings to stay.

And that upon Payment or Satisfaction in manner aforesaid, all further Proceedings on the said Judgment again to be stayed, and so *Toties tanties*. And the Defendant, his Body, Lands or Goods, shall be discharged out of Execution as aforesaid.

9 W. 3. cap. 10.

8 & 9 W. 3. cap. 10.

Where a Covenant is in the Disjunctive, to render the best Beast for the Herriot, or 40 s. at the Election of the Lessor, upon the Death of any of the Lives; here an Action will not lie, until the Lessor gives Notice which he will accept, whether the best Beast, or the

Where the Covenant is in the Disjunctive, when the Action to be brought.

*Testatum existit*, is good in Covenant, not in Debt.

in his Declaration, *Testatum existit*, that the Plaintiff demanded, &c. but in an Action of Debt for Rent, it is naught; and so held in Arrest of Judgment after a Verdict. 6 W. B. R.

It lies where there is any Agreement under Hand and Seal.

Where there is any Agreement under Hand and Seal, Covenant lies. 2 Mod. 91.

Of Covenants in Law, and express Covenants.

All Covenants between Lessor and Lessee, are either Covenants in Law, or express Covenants. By Covenant

in Law, the Lessee is to enjoy against the lawful Entry, Eviction, or Interruption of any Man; but not against tortious Entry, Evictions or Interruptions: Because against tortious Acts the Lessee hath his proper Remedy against the wrong Doer. Vaugh. 118, 119, 126.

What express Covenants binds the Lessor in Case of tortious Acts.

But if the Lessor expressly Covenants that the Lessee shall enjoy without the Entry or Interruption of any Man, whether such Entry or Interruption be lawful or tortious, there Covenant will lie against the Lessor for the tortious Entry of a Stranger; because other Meaning can be given to his Covenant, because of

Words, *Of any Man*. Vaugh. 119.

And where not. When a Man covenants, that the Lessee shall enjoy against all Men; doth neither expressly covenant for his Enjoyment against tortious Acts, nor doth the Law so interpret his Covenant. Vaugh. 123.

Yielding and Paying, and other Words, will make a Covenant.

There are many Cases where Words will make a Covenant, where the general Words of Covenant and Grant are wanting, as *Yielding*

*Paying* will make a Covenant. 2 Mod. 91.

Covenant not to sue where it is a Release, and where not.

A Covenant not to sue, is an absolute Release. But a Covenant not to sue within a particular Time, is not a Release; and if a Suit be brought

within the Time, the Remedy must be by Action of Covenant. Show. Rep. 46, 47.

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Where Houses are blown down by Tempest, the Law excuses the effect in an Action of Waste; but in Covenant to repair and uphold, it will not. 1 Plow. 29. a.

There was a Demurrer to a Declaration, for not concluding with these Words, *Et sic infregit Conventionem*, after the Breach assigned (as the usual Course is); but the Court held it good notwithstanding. Mich. 34 Car. 2. B. R. Jones 229.

Where there are Mutual Covenants, and the one is not to be performed before a Precedent Covenant to be performed by the Plaintiff; where the Covenant is not suable, until the other is performed. 4 Jac. 2.

But where the Covenants are Distinct and Mutual, several Actions may be brought against each other.

Where there is a Covenant for the doing of several Matters, the Plaintiff assigns a Breach that the Defendant has not performed *aliqua ex Parte*.

Altho' it is not set forth particularly what the Covenants were which were not performed, yet it was held good after a Verdict; because it shall be presumed that the Judge, who tried the Cause, was satisfied upon the evidence. 5 W. & M. B. R.

If any of the Covenants in an Instrument, or of the Conditions of a Lease, are against Law, and some are good and lawful; those which are against Law, are *ab initio* void, and the other stand good. 11 Rep. 27. b.

An Action of Covenant was brought by Seven Plaintiffs against One Defendant; and they set forth, That they, & *quilibet eorum per se respectu* covenanted, that every one of them should bring so much Money into Stock to be employed, and it was held that the Action did well lie for the Seven. 5 W. & M. B. R.

Where Houses are blown down by Tempest, Waste will not lie, but Covenant will.

The Conclusion of the Declaration should be, *Et sic infregit Conventionem*.

Where Mutual Covenants and Precedent Covenants.

When the Covenant is suable.

Where Covenants are Distinct and Mutual.

Where a general Breach is assigned, that *non performatur aliqua*, yet it is good after Verdict.

Where good in Part, and void in Part.

Where good in Part, and void in Part.

Covenant by Seven against One; and says, that they, & *quilibet eorum per se respectu* covenanted.

Where the Words of the Covenant, *Cum quolibet eorum*, are several, and where joint.

in respect of the several Interests, by the Words, *Quolibet eorum*, the Covenant is made several. 5 Rep. 18. b. 19. a.

But if he had demised the Three Acres to them jointly then the Words, *Cum quolibet eorum*, are void, and the Covenant is joint. 5 Rep. 19.

The Word *Separatim* makes several, and not joint Covenants.

One Covenant not pleadable in Bar to another Covenant.

Covenant to repair Copyhold Lands, runs with the Lands, by the 32 H. 8. cap. 34.

A. covenants to do an Act.

Yet an Action lies for him.

And the other must have his Remedy over.

Assignees shall have Covenant upon the Words, *Demise, Grant, &c.*

Where the Assignee shall be bound by the Lessee's Covenant, and where not.

be not named. But when it extends to a Thing which not Essence, as the Building of a Wall upon part of the Land there the Assignee, if not named, shall not be bound, but Lessee, his Executors or Administrators are. 5 Rep. 16. a.

A Man by Indenture demised Black Acre to A. White Acre to B. and Green Acre to C. and covenants with them, and, *quolibet eorum*, that he lawful Owner of the Land: He

Merchants join and covenant severally: This Word *Severally*, makes them several, and not joint Covenants. 5 Rep. 23. a.

One Covenant is not pleadable in Bar to another Covenant. 13 H. 4. v. 41.

A Covenant to repair Copyhold Land, runs with the Land. 3 Lev. 326. Also Assignees of the Reversion of Copyholds Lands shall take Advantage of Covenants, upon the Statute 32 H. 8. cap. 34.

A. covenants to raise 400 Soldiers, and bring them to such a Port, and B. was to find Shipping, for which he was sued upon the Covenant, if the other had not raised the Soldiers. For that can only be alledged in mitigation of Damages, and is no excuse for the Defendant. 2 Mod. 76.

The Assignee shall have an Action of Covenant upon the Words, *Demise, and Grant, &c.* 4 Rep. 80.

Where a Covenant extends to a Thing in esse, as a House, &c. of the Demise, it runs with the Land and shall bind the Assignee, although

If the Lessee, for himself and his assigns, had covenanted to make a new Wall upon the Premises; because it is to be made upon the Land demised, it shall bind the Assignee who is to have the Benefit of it; but if it had been a collateral Thing to the Land, it shall not bind, tho' he be named. 5 Rep. 16. b.

Where if named,

Where not,

A Lease for Years is made of Cattle or Goods, and the Lessee covenants for himself and his Assigns, to re-deliver them at the End of the Term: Here is no Privy, nor Reversion, but a *Chose en Action*, which can bind only the Covenantor, his Executors and Administrators.

Upon a Lease for Years of Cattle, the Assignee is not bound, but only the Covenantor, &c.

A Man leases for Years by the Lords, Grants and Demise. If the Assignee of the Lessee be evicted, he shall have Covenant, 5 Rep. 17. a.

bind only the Covenantor, 5 Rep. 16, 17.

Demise and Lease is a Covenant.

A Bond with Condition to perform Covenants, is forfeited upon the Breach of a Covenant in Law, as Demise, Grant, &c. For the Defendant was obliged to perform all Covenants, Grants, &c. which extends as well to Covenants in Law, as to Covenants in Fact. 4 Rep. 80. b.

Condition to perform Covenants, is broken upon the Non-performance of Covenants in Law,

Altho' the Recovery was by Verdict, yet the Plaintiff ought to shew, that the Party who recovered had an Estate Title, 4 Rep. 80. b.

No good Breach, except the Recovery to be shewn to be by Estate Title,

An express Covenant qualifies the Generality of the Covenant in Law, and restrains it by the mutual Consent of both Parties, so that it shall extend further than the express Covenant, 4 Rep. 80. b.

An express Covenant qualifies a general Covenant in Law, and how,

Without Consideration, a Gift is good, but a Condition is not.

What Consideration is for the King's Grant.

What Consideration will support a Gift to a Son, or a Relation.

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What Consideration will support a Gift to a Son, or a Relation.



# Consideration.

Consideration, See } First Part 173.  
 } Uses.  
 } Bargain and Sale.

A Consideration, *Quid.*  
 which, no Contract can bind the Parties.

A Consideration void in Part, is void in the Whole.

Assumpsit lies not upon an illegal Consideration.

A Consideration executed cannot be traversed.

if it were not then actually done, it is *Nudum Pactum*. *Hob. 106.*

If the Promise be Executory, an Action lies not till the Thing be done.

But otherwise, when on either Side Executory.

formance; for it is the Counter-promise, and not the Performance, which makes the Consideration. *Ibidem.*

A Free Gift is good without a Consideration.

What Considerations for the King's Grant.

What Considerations will raise an Use to a Son, or a Relation.

A Consideration is the material Part of a Contract; without

A Consideration which is void in Part, is void in the Whole. *Hob. 126.*

An Assumpsit lies not upon an illegal Consideration. *2 Lev. 161.*

A Consideration executed cannot be traversed, because it is past, and incorporated with the Promise: And

But if the Promise be Executory as in Consideration that you will serve me a Year, I will give you 5*l.* you cannot bring your Action till the Service is performed: But if it were upon a Promise on either Side Executory, there needs no Averment of Performance.

The Law establishes Free Gifts without Considerations. *Hob. 230.*

A false Consideration material, past, shall not hurt a Grant of the King; yet a future Consideration, not performed, will avoid it. *Hob. 230.*

Consideration of natural Affection only. And Consideration of natural Affection, with 20*l.* will raise an Use to a Son. But Consideration

only to a Son without natural Affection, will not raise an Use without Enrolment. 1 Lev. 56.

If a Deed of Feoffment be made to Two or Three of Lands or Tenements, and no Consideration is expressed in the Deed for the making

A Feoffment without a Consideration, is to the Use of the Feoffor.

hereof: It shall be intended by the Law, that it was made to them in Trust for the Use of the Feoffor: So likewise of a Fine or Recovery. For it shall not be intended he would part with his Land without a Consideration; and yet the Deed shall be construed to operate something, and also that which shall seem most reasonable.

A Consideration altogether past is not good: As if a Man hath disbursed several Sums for me without my

A Consideration past is not good.

Request; and afterwards I say to him, that in Consideration that he hath paid the said Sums for me, I promise to pay him. This is no Consideration, because it was executed before. More 20, Pl. 357. But aliter, if at my Request. Cro. El. 282.

# Common and Commoner.

Common and Commoner, See

First Part 174.  
Distress.  
Appurtenant and  
Appendant.  
Apportionment.

**Common, Quid.** Common, is the Right that a Man hath to put his Cattle to Pasture into the Ground that is not his own.

There are four Manner of Commons:

The several Sorts of Commons.

1. Common Appendant.
2. Common Appurtenant.
3. Common in Gross.
4. Common of Vicinage. 6 Rep. 60. a.b.

Common Appendant, what.

Common Appendant hath its Commencement thus, viz. When a Lord hath enfeoffed another with Arable

Land to hold in Soccage; the Feoffee, to maintain the Service of his Lord, hath Common on his Wastes for his necessary Cattle. 4 R. 37. viz. Horses and Oxen to plow his Land, and Cows and Sheep to make Dung for it. 37 H. 6. 34.

And why it is.

1. Because he cannot maintain his Cattle without Pasture.
2. Because it is in Favour of Tillage. 4 Rep. 37.

Must be by Prescription, and to what.

It cannot be created at this Day nor be claimed by Grant. Keilw. 123. But must be by Prescription. 5 Aff. 29.



26 H. 8. 4. And shall not be to  
in House. 22 H. 6. 43. But to Ara-  
ble Land only. 37 H. 6. 34. 26 H.

Only to Arable Land.

4. And may be limited to a certain Number. 17 E. 3. 27.  
4 b. Note, Where the Number is certain, there they need not  
to lay in their Prescription, for so many Cattle to be Levant  
and Couchant; but where it is for Cattle *sans Nombre*, there it  
must be said Levant and Couchant.

It cannot be for all Manner of  
Cattle, because Goats, Geese, &c.  
which are not commonable Cattle,  
are comprehended under Cattle: But this is Common Appur-  
tenant. 37 H. 6. 34. b.

For what Cattle.

It shall be only of the Tenant's own  
Cattle, or those only with which he  
Manures, Dungs, or Tills the Land.

For what Cattle, and  
when Levant and Cou-  
chant.

1 H. 6. 22. 45 E. 3. 26. And those only Levant and Couchant.  
Kitch. 94. Keilw. 123. b. 12 Rep. 66. But he cannot agift  
the Cattle of a Stranger. 11 H. 6. 22. b. Br. Common 47. See  
Gateward's Case in the 6 Report, very good Learning, and Di-  
rections in the Case of Commons; and 8 Rep. 78. b. Weild's Case.

So many Cattle as the Land to  
which the Common belongs can main-  
tain in Winter, shall be said Levant  
and Couchant. Noy. 30. See 1 Ventr.

What and how many  
Cattle may be Levant and  
Couchant.

4. And so many Beasts may be said to be Levant and Cou-  
chant upon an House, as may be tied there, and are usually  
to be there kept. See 1 Ventr. 34. 2 Brownl. 101. per Vaugh.  
53. To a common Intent, Cattle cannot be Levant, &c.  
upon an House.

Common Appendant may be to  
Common, after the Corn is severed,  
till it is re-sown. F. N. B. 180. E.

From Severance of the  
Corn, till it is re-sown.

And if Part is re-sown, he may Common in the Residue. Re. v.  
185. 2 Brownl. 189.

So it may be to Common in a  
Meadow, after the Hay carried, till  
Candlemas or Lady-Day, &c. 17 E. 3.  
6. 34.

So in a Meadow, after  
the Hay carried, till Can-  
dlemas.

So it may be to Common for two  
Years after the Corn cut and carried  
until re-sown, and every 3d Year per  
1st Ann. 22 Aff. 42. 1 Sand. 343.  
44.

For 2 Years after the  
Corn severed, and all the  
3d Year.

May have this Common for 30 Cattle in one Place, and 20 in another.

An Inhabitant in a Town claims Common, what it is.

Common Appurtenant, what.

This Day by Grant or Prescription, *Plow.* 381. *Natura Breuium* 130.

Common Appurtenant, how it may be.

but it must be said, Levant and Couchant. 25 *Aff.* 8.

It may be for Cattle not commonable.

Common of Estovers to be burnt, not sold.

Woody, but must shew that it is to be burnt or spent in the House. 1 *Syd.* 354. 1 *Lev.* 231.

With what Cattle he may use it, and with what not.

6. 6. b. But he cannot use the Common with Cattle which are to sell. *Ibid.*

For whom a Writ of Admeasurement lies.

yet upon this Suit, all the Commoners shall be admeasured. *F. N. B.* 125. but *Qu.* 1 *Roll. Rep.* 365.

How to prescribe for Common Appurtenant.

as belonging to a Tenement; this is a void Prescription: Because he doth not say that it is for Cattle Levant and Couchant upon the Land, to which he claims it to be Appurtenant.

A Man may have Common Appendant for 30 Cattle in one Place, and to the same Land Common Appendant in another Place for Part of his Cattle. 17 *E.* 3. 34. b.

A Man claims Common, as an Inhabitant in a Town, for all Manner of Cattle, he shall have no Common but for those Levant and Couchant. 15 *E.* 4. 32. as Common Appendant.

Common Appurtenant is good, as well for Cattle certain, as also for Cattle *sans Nombre*, and may be acquired

A Man may prescribe to have Common Appurtenant for all Manner of Cattle at every Season in the Year.

A Man may prescribe to have Common Appurtenant for his Cattle not commonable, as Hogs, Goats, &c. *Co. Litt.* 122.

A Man may prescribe to have Common of Estovers to his House, but he cannot prescribe to sell the

He that hath Common Appurtenant cannot agist the Cattle of a Stranger. 30 *E.* 3. 27. But may take in Sheep to compester his Land. 14 *H.*

A Writ of Admeasurement of Common, lies only for and against such as have Common Appendant.

If a Man claims Common by Prescription, for all Manner of commonable Cattle in the Land of another

for a Man cannot have Common *sans Nombre* Appurtenant to Land; And when he claims the Common for all Cattle commonable, and says not for Cattle *Levant and Couchant* upon the Tenement, this shall be intended Common *sans Nombre*, according to *Levant and Couchant*, by the Words; for there is not any Thing

to limit it, when he doth not say for Cattle *Levant and Couchant*. See 1 *Leo.* 196. 1 *Syd.* 313, 314. But where a Prescription is for Common for a certain Number of Cattle as belonging to certain Land, he need not say *Levant and Couchant*, where the Preference is for Cattle *sans Nombre*. 2 *Mod.* 83. 1 *Roll. Abr.* 401. Pl. 4. 1 *Ventr.* 163. 1 *Mod.* 75. *Cra.* 27.

But where the Prescription is for Common Appurtenant, *sans* *Levant and Couchant*, there a certain Number of Cattle ought to be express'd. 12 *Rep.* 66. Common Appurtenant, and Common in *Gross*, may commence either this Day by Grant, or else by Prescription. 4 *Rep.* 38.

How it must be by Prescription.

Common in *Gross*, is Liberty to have Common without Lands or Tenements in the Soil of another; and it may be for Life, or in Fee, and passes commonly by Grant. N. *Brevium* 31, 37. 1 *Sand.* 343, to 346.

How Common Appurtenant, and in *Gross*, may commence.

Common by *Vicinage*, is where there are Two Villis, and the Commons join together; to prevent Suits, they Inter-common one with the other: But the Commoner must put in his Cattle into that Common belonging to his own Vill, and not into that Common belonging to the other; and if one Lord encloses, the other Vill cannot then Common. 7 *Rep.* 5. a, b.

Common in *Gross*, what it is.

Common of *Vicinage* ought to be by Prescription, and the one may close against the other. 4 *Rep.* 38.

Common by *Vicinage*, what.

Where it is between Two Manors, if one Lord encloses any Part of his Common, the Common for Cause of *Vicinage* is gone. M. 13 *Fac.* It is a Common Appendant. 7 *E.* 26.

Must be by Prescription.

How to plead Common of *Vicinage*. See *Popham.* 201.

How to be pleaded.



Prescription to have Common Appurtenant for Cattle Levant and Couchant upon his House, cum Pertinentiis.

*ed to be upon a House cum Pertinentiis, it shall be intended to be upon the Ground belonging to the House.* 8 Rep. 78. b. 79. a.

Where a Commoner may bring an Action against a Tort-Feazor, without shewing the Original Grant.

Cony-burrow. It was moved in Arrest of Judgment, That the Plaintiff had not entitled himself to any Common, nor to the Land in which it was Appurtenant: But it was answered and adjudged, That the Defendant being a Tort-Feazor, such General Declaration against him is well enough. 6 W. & P. 32 Ca. 2. Rotl. 109. B. R. See Danv. Abr. 175. See Title Nuisance.

A Common de Novo must be by Deed.

*Because it is a Thing against the particular Interest of Meum and Tuum, and therefore the Law will not that it hath a good Foundation to warrant it.*

Where the Lord may surcharge or enclose a Common.

for the Commoners to common upon, in regard of the Largeness of the Common, and the small Number of Commoners and of their Stock: But if there be not such an Overplus of Common, he cannot surcharge or enclose any Part of it: And in an Action against the Lord for Surcharging, the Surcharge must be shewn particularly, viz. How much Land, and how many Commoners: But against a Stranger, the setting forth generally is sufficient. 2 Mod. 6, 7. But the Lord may license a Stranger to put in his Cattle, if he leaves Sufficient for the Commoners, otherwise not. 2 Mod. 6, 7, 275. But where the Lord encloses, and leaves not sufficient Common, the Commoners may break down the whole Enclosure. 2 Inst. 88. Note, it must be in the Day Time. See Title Noctanter. But the Lord cannot license the erecting of a Warren of Conies upon the Common, for this would be in Prejudice of the Commoners. But where

The Defendant prescribes to have Common sans Nombre, for Cattle Levant and Couchant upon his House, cum Pertinentiis. Altho' Levancy and Couchancy cannot properly be upon a House but upon Land only; yet it being pleaded upon the Ground belonging to the House. 8 Rep. 78. b. 79. a.

The Plaintiff brought an Action upon the Case; and sets forth, That he was possess'd of an House and Lands in D. and ought to have Common Appurtenant, and that the Defendant dug in the Soil, and made a

A Common, which is of late Times erected, must be erected by Deed.

*Because it is a Thing against the particular Interest of Meum and Tuum, and therefore the Law will not that it hath a good Foundation to warrant it.*

The Lord of the Soil of the Common, may either surcharge or enclose an Overplus of a Common; that is, so much of it as is more than needful

for the Commoners to common upon, in regard of the Largeness of the Common, and the small Number of Commoners and of their Stock: But if there be not such an Overplus of Common, he cannot surcharge or enclose any Part of it: And in an Action against the Lord for Surcharging, the Surcharge must be shewn particularly, viz. How much Land, and how many Commoners: But against a Stranger, the setting forth generally is sufficient. 2 Mod. 6, 7. But the Lord may license a Stranger to put in his Cattle, if he leaves Sufficient for the Commoners, otherwise not. 2 Mod. 6, 7, 275. But where the Lord encloses, and leaves not sufficient Common, the Commoners may break down the whole Enclosure. 2 Inst. 88. Note, it must be in the Day Time. See Title Noctanter. But the Lord cannot license the erecting of a Warren of Conies upon the Common, for this would be in Prejudice of the Commoners. But where

here there is an Overplus of Common, there the Surcharging

Enclosure can be no Prejudice to

See Stat. of Westm. 2. cap. 46.

de Merton, cap. 4. 2 Inst. 86,

Vaughan 256, 257.

The Lord seized of the common-

able Wastes, may feed the Common

Mir & per Tout. 18 E. 3. 43. So

Lord may by Prescription (but not

without) agist the Cattle of a Stran-

er. 30 E. 3. 27.

A Custom was alledged for Custo-

ary Tenants to have *solam & separa-*

*pasturam*, exclusive of the Lord.

The Court thought, that unless the

Lord had some Part of the Waste appropriated to himself, it

is a void Custom, notwithstanding the Case of North & Coe.

7. W. B. R. Note, It is aginst the

nature of the Word Common, to ex-

clude the Owner of the Soil, it being

implied in the first Grant. Co. Litt. 122. a.

In what Cases the Lord who en-

closes a Forest, Chase, &c. may ex-

clude the Commoners from having of

their Common there, and in what

8 Rep. 136. b. 138.

Right for Damage Feazant in

a Common, and entitles himself to

common in *Loco quo*, &c. but alledges

any Damage to himself, viz.

that he could not have or enjoy his

common *tam amplis modo*, &c. for without a particular Dam-

age he cannot distrain a Strangers Cattle, no more than he

can have an Action on the Case. And in all Actions upon the

Case, Special Damgages must be alledged. 3 Lev. 104. 9 Rep.

112, 113. 2 Mod. 6, 7, 275.

One Commoner cannot distrain

the Cattle of another Commoner with

in, but he may distrain the Cattle

of a meer Stranger, who hath no Pre-

sence of Right. Lutw. 1240. Hob. 72.

Rep. 111. to 113.

Westm. 2. cap. 46.

Merton, cap. 4.

The Lord may Common with the Commoners.

Also may by Prescription agist Cattle of Strangers.

A Custom exclusive of the Lord, held not to be good.

The Lord may appropriate to himself, it is a void Custom, notwithstanding the Case of North & Coe.

Commoners cannot exclude the Lord.

Where a Lord who encloses a Forrest, Chase, &c. may exclude Commoners, and where not.

Where and how an Action for Damage Feazant can be made for Damage Feazant in his Common.

One Commoner cannot distrain the Cattle of another Commoner, but the Cattle of a Stranger he may.

A Common Nuisance must be reformed at the King's Suit, a Private Nuisance at the Commoners Suit.

to several Commoners, is *Privatum Dammum*, and not a Common Nuisance. 9 Rep. 113. 4.

Where the Lord shall have the Action, and where the Commoner.

his Common, or that he cannot have the Enjoyment of it. 2 Rep. 113. 4. 2 Mod. 6. 7. 275.

Shack, what Sort of Common it is.

sown, and is in the Nature of Common Appendant, or Appurtenant; and although some of the Lands be enclosed, yet after the Corn is gone it shall be used for Common, until re-sown. 7 Rep. 3. 4. b.

Common Appendant, and Common Appurtenant, in case of Purchase of Part.

the 40 Acres, it is lost. Common Appendant in 40 Acres belonging to 20 Acres, if he loses 10 of his Acres, or buy Part of the 40 Acres, the Common may be divided and apportioned *pro Rata*. Hob. 25, 235. Also 8 Rep. 79.

A Commoner may pull down Hedges.

Soil, but pulls down the Erection. 2 Mod. 65, 66.

Common Appendant not extinguished by Sale of Part.

See of Part, shall have Common for all Cattle Levant and Couchant. 8 Rep. 79.

Parol Seisin delivered by the Sheriff, is a good Seisin.

to have an Affize. 22 Aff. 84.

*Commune Documentum*, shall be reformed at the Suit of the King. And *Privatum Dammum*, shall be reformed by Action at the Suit of the Party grieved; and a Trespass made

The Lord of the Soil shall have Trespass in the Waste or Common, but the Commoner shall not have it, but *ex consequenti*, viz. the Loss of

Shack, is a Common to be taken in common Fields from the Time the Corn is carried off, until

If he who hath Common Appurtenant in 40 Acres belonging to 20 Acres, sells 10 of his Acres, the Common is not lost; but if he buy Part of the 40 Acres, the Common is not lost. Hob. 25, 235.

If a Man hath Common Appendant in 40 Acres belonging to 20 Acres, if he loses 10 of his Acres, or buy Part of the 40 Acres, the Common may be divided and apportioned *pro Rata*. Hob. 25, 235.

A Commoner may abate Hedges erected upon the Common, for so much as doth not thereby meddle with the Erection. 2 Mod. 65, 66.

But where a Commoner intermeddles with his own Land, by the Enclosing of it, this shall not turn to his Prejudice; and the Alience and Loss of Common for all Cattle Levant and Couchant.

If a Man recovers a Common by the Sheriff upon a Writ of Seisin comes to the Place, and by Parol Seisin delivers him Seisin: This is a good Seisin.



A Commoner cannot cut Bushes,  
which impair the Common, un-  
less by Prescription. *Bridg. 10. Godb.*

What a Commoner may  
do upon the Common, and  
what not.

82. For if he makes any Thing de-  
fect in the Land, he is a Trespassor, but he may amend or  
reform a Thing abused, as to dig down Mole-Hills, or fill up  
Holes. *1 Brownl. 208.*

By the Stat. of *Merton, cap. 4.* the  
Lord may approve his Common, leav-  
ing Sufficient for the Commoners, o-  
therwise not; which Matter may be  
tried in a Writ of Assize, or Action of  
Trespals. *2 Inst. 88. Godb. 117. See*  
*Inst. 85, 86. Vaugh. 257.* Or if the

Where the Lord may  
approve, and where not.

*Merton, cap. 4.*

How to be tried.

Lord enclose any Part, and leave not sufficient Common, the  
Commoners may in the Day-Time break down the whole En-  
closure. *2 Inst. 88.* But if it be bro-  
ken down in the Night by Persons un-  
known, the Four or Five next adja-  
cent Villages shall be prosecuted in the  
Town-Office for the Repair of the Fences, although the Enclosure  
not justifiable by the Lord. *See Title Noctanter.*

How to proceed where  
Fences are broken down  
*Noctanter.*

Who may approve, and who not.  
*See Davo. Abr. 808, 809.*

Who may approve, and  
who not.

No Writ of Admeasurement lies a-  
gainst a Commoner, *sans Nombre.*  
*N. B. 125. D.* But the Tenant may  
restrain his Cattle. *1 Sand. 345.*

Where a Writ of Ad-  
measurement lies not.

Conies,

# Conies, and Cony-Burrows,

See *Rufance*.

Conies are *ferre Nature* out of the Owner's Ground. **A** Man makes Cony-Burrows on his own Land, which increase so much, that they destroy the Profits of his Neighbours Lands: No Action lies for this, because the Owner of the Lands may kill them, because they are *ferre Nature*; and he who made the Cony-Burrows, hath not Property in them. 5 Co. 104. b.

Confession, See First Part 175.

Conti

# Continuando,

## See Trespafs.

**C**ontinuando, is the laying in an Action of Trespafs the Continuance of it.

*Continuando, Quid.*

In an Action of Trespafs for the breaking of the Plaintiff's House, and taking and carrying away of 20 Loads of Corn, *totam Transgressionem*

Where a *Continuando* laid in a Declaration is good, and where not.

*predictam, a predicto Vicefimo die Octobris, Anno supradicto usque Vicefimum diem Novembris, tunc proxime fequentem diversis diebus & vicibus Continuando.* This *Continuando* is naught: Because it is against Humane Nature to continue Night and Day for a Month together committing of Trespafs; for Mankind must take some Rest, and every particular Day's Trespafs is a several Trespafs. But where Cattle do trespafs upon Ground, they are continually Night and Day trespassing; and therefore the *Continuando* in that Case is good. *Hill. 7 W. Howard & Wilson B. R.*

Trespafs for breaking of an House with a *Continuando*, this is good; for until there is a Re-entry, the Continuation of the Possession is a continuing Trespafs. *Paf. 8 W. B. R. Lutw. 1312.*

Trespafs for breaking of an House with a *Continuando*, is good,

In Trespafs with a *Continuando* of divers Things, and of some of those Things there could be no *Continuando*; yet it shall be good for those Things for which the *Continuando* could be, and not for the others. But if the *Continuando* had been particularly,

Trespafs of divers Things with a *Continuando*; and for some there may be a *Continuando*, and for others not. It is good for those for which it may be.

of



of those Things whereof a *Continuando* could not be; then it had been naught. 3 Lev. 94.

A *Continuando* may be laid for longer Time than can be proved.

It is usual to lay the *Continuando* for longer Time than you can prove; but Dammmages shall be given for what can be proved. 2 Mod. 233.

*Continuando*

See *Continuando*

*Continuando* is the laying in  
of a *Continuando* in the  
Continuando.

*Continuando* is the laying in  
of a *Continuando* in the  
Continuando.

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Continuando.

# Cinque-Ports.

At first, the Privileged Ports were but Three, viz. Dover, Sandwich, and Ramney; but Hastings and Hythe were added by the Conqueror, 4 Inst. 222. to which, Winchelsea, Rye, and other Towns, are added. 2 Inst. 556. 4 Inst. 222.

Which are the Cinque-Ports.

They are by Charter exempted to drawn in Plea within the County General. *Yelv. 13.*

Not to be drawn in Plea in the County.

They hold Plea of Freehold by Int. 1 *Sid. 166.*

They hold Plea of Freehold.

The Jurisdiction of the Cinque-Ports is General, as well to Personal as Real and Mixt Actions. *Inst. 224.*

And also of Personal and Mixt Actions.

The Mayor and Jurats of the several Ports have Power to hold Plea; no Writ of Error lies upon their judgments in B. R. but they are Examable by Bill, in the Nature of Writ of Error, *Coram Domino Curia seu Guardiani Quinque Portuum et Curiam suam. 4 Inst. 224.*

Who hold Pleas there.

No Writ of Error lies.

How Errors are there Examable.

Upon a Judgment in any of the King's Courts, and the Defendant has no Lands or Goods but in the Ports; the Plaintiff may get the Writ certified into the Chancery, and from thence sent by the Writ to the Lord Warden to make Execution. 4 *Inst. 223.* *28. 3 Leon. 3.*

How Execution shall be upon a Judgment in the King's Courts.

The Constable or Keeper of Dover is Warden of the Cinque-Ports; and the Writs directed to him

How Writs are directed to the Ports.

are,

**Cinque-Port.**

are, Rex, &c. Constabularie Castrî nostri de Dover & Castellum  
Quinque Portuum. 2 Inst. 556.

A *Quo Minus* lies to them.

**They cannot award Pro-  
cess of Outlawry.**

*A Quo Minus* lies to the Cinque-  
Ports. *Hard.* 475. *Cro. El.* 911.

The Cinque-Ports cannot award  
Process of Outlawry. Cro. El. 910



# Conveyance,

First Part 177.

Bargain and Sale.

Conveyance, See

Fine.

Recovery.

Uses.

**Conveyance**, is a Deed which passes Land from one Man to another.

Conveyance, *Quid.*

A Covenant to convey according to Draughts agreed upon, the Plaintiff need not to tender Wax: because the Defendant had taken it on himself. 1 Lev. 44. Also see where when a Tender of a Conveyance

A Covenant to convey according to Draughts agreed upon, who must tender the Wax.

is requisite, and when

Where the Bargain and Sale, Recovery and Fine, altho' made, suffered, and levied at several Times, yet by mutual Consent of the Parties make but one Assurance according to and therefore every of them tending to defeat the Bargain, none of them shall destroy any Part of it. 2 Rep. 75. a. 2 Mod. 233.

Where a Bargain and Sale, Fine and Recovery, make but one Conveyance.

the Original Contract:

None of them shall destroy any Part of it.

The Manner of Pleading of a Conveyance, with the Words, Give, Grant, Release and Confirm. 3 Lev. 292.

How to plead a Conveyance.

Conveyances have been altered, so much by the Knowledge of Learned, as the Ignorance of unlearned Men: The usual Conveyance of the Common Law, was by Feoffment and Livery; but if there was

How Conveyances came to be altered.

The old Conveyance was a Feoffment.

No Livery where Tenant was in Possession.

ways attorned: And upon the same Reason, a Lease and Release was held to be a good Conveyance to pass an Estate, but then the Lessee was to be in actual Possession before the Release.

When came Settlements to Uses.

The Use united to the Possession.

Now to be construed by Law.

When Estates passed by Lease for Years, and a Grant of the Reversion, and Attornment of the Lessee.

When Lease and Release at the Common Law, upon the Entry of the Lessee.

When a Lease and Release by the Statute of Uses, without Entry of the Lessee.

of the Lessee; because the Statute did execute the Lease, and raised an Use presently to the Lessee. Serjeant More was the first who practised this Way; *per North*, Chief Justice. 2 Mod. 251, 252.

a Tenant in Possession, so that Livery could not be made, then the Reversion was granted, and the Tenant always attorned: And upon the same Reason, a Lease and Release was held to be a good Conveyance to pass an Estate, but then the Lessee was to be in actual Possession before the Release.

Afterwards Uses came to be frequent, and Settlements to Uses very common, whereby many Inconveniences were introduc'd: To prevent which, the Statute of 27 H. 8. was made, by which the Use was united to the Possession; for before, Uses were to be executed by the Rules of Equity, but are now reduc'd to the Common Law and therefore to be construed by the Rules of Law.

At the Common Law, when an Estate did not pass by Feoffment, the Vendor made a Lease for Years, and the Lessee actually entred, and the Lessor granted the Reversion to another, and the Lessee attorned.

Afterwards, when an Inheritance was to be granted, then also was a Lease for Years usually made, and the Lessee entred (as before), and the Lessor released to him.

But after the Statute of Uses, became an Opinion, That if a Lease for Years was made upon a valuable Consideration, a Release might operate upon it without an actual Entry

# Certificate,

First Part 177.  
 Costs.  
 Certificate, See Judgment.  
 Judges.  
 Tryal.

Judges Certificates for the Reward  
 for Apprehending of Burglars and  
 Felons. See Title Felons.

For Tryals by Bishops Certifi-  
 cates, See Title Tryals.

Judges Certificates for  
 Apprehending of Felons.

Tryals by Bishops Cer-  
 tificates.

**Clergy.**

**V 3**



# Clergy,

## See First Part 178.

Clergy, *Quid.*

**C**lergy, is defined to be an Ancient Liberty of the Church, confirmed by divers Acts of Parliament. And it is where the Prisoner is arraigned of Felony before a Temporal Judge, and is convicted, and prays his Clergy: Then the Judge delivers him to the Ordinary, to try if he can read as a Clerk or no.

How the Tryal of a Clerk or not was.

In old Time, few Persons were bred to Learning, but those who were actually in Orders, or educated for that Purpose: And therefore the Tryal of a Clerk or no was by Reading, of which the Court was Judge, and not the Ordinary: For if he could not read, the Court would not deliver him as a Clerk, tho' the Ordinary claimed him: And if he did read, he should be allowed as a Clerk, tho' the Ordinary refused him. And Reading being the Way of Tryal, whether Clerk or not; without farther Examination into any other Qualification, all Persons that so approved themselves by Reading were allowed to be Clerks. *Kelyngs Rep.* 100, 101.

Before the Stat. of 4 H. 8. ca. 2. Clergy was allow'd in Murder, now only in Manslaughter.

What Persons shall be excluded from Clergy. See 10 & 11 W. 3. cap. 23.

See the Statute of 3 & 4 W. 3. cap. 9.

For Punishment of Women convicted of Felony.

Before the Statute of 4 Hen. 8. cap. 2. Clergy was allowed in Murder; but now by that Statute it is taken away in Murder, and allowed only in Manslaughter.

What Persons shall be debarred and excluded from Clergy. per 10 & 11 W. 3. cap. 23. See Title Burglary.

See the Statute of 3 & 4 W. 3. ca. 9. Intituled, *An Act to take away Clergy from some Offenders, and to bring others to Punishment. And the Punishment of Women convicted of Felony, where Men have their Clergy. And as to Conviction* for

for a Felony after Clergy. This Act was Temporary; but *A. C. 5 W. & M. 4 & 5 Ill. & M. ca. 24. cap. 24. Sect. 14.* continued it for *sect. 14.*

Three Years, from the 13th of February 1692. and from thence to the End of the next Session of Parliament: In which Act there is a Clause, *Sect. 14.* That if any Woman hath been, or hereafter shall be, convicted of any Felony for which a Man might have the Benefit of Clergy, and upon her Prayer hath it, there shall not be Judgment of Death against her, but she shall be burnt in the Hand. And where she hath once had, or hereafter shall once have, the Benefit of the said Statute, and shall be again convicted of any other Felony for which a Man might have the Benefit of his Clergy, such Woman shall be, and is hereby totally excluded from having any Benefit or Advantage of the Statute, but shall suffer Pains of Death, as if the said Statute had not been made.

Where a Woman upon her Prayer hath once had the Benefit of the Statute.

**Clerk,** See First Part 178.

**Custom Brevium,** See First Part 178.

# Departure.

See First Part 178.

**A-Departure, Quid.**

Departure, is where a Man pleads a Plea in Bar, and the Plaintiff replies to it, and he after in his Rejoinder pleads or sheweth another Matter contrary, or not pursuant to his first Plea: This is called a Departure from his Bar.

Defendant cannot, after *nul fecer' Arbitrium*, plead that the Award is void.

No such Award pleaded; the Award is set forth, and a Joinder, That it was not tendred; this is a Departure.

Defendant, after his Plea of *Liberum Tenementum*, pleads Tender of Amends; it is naught:

But he may plead it after a new Assignment.

After *nullum fecerunt Arbitrium*, the Defendant cannot plead that the Award is void: Because that is a Departure from his former Plea. 1 Lev. 133.

But if Award pleaded; the Award is set forth, and a Joinder, That it was not tendred: This is a Departure. 1 Lev. 300. *Lutw.* 385.

The Defendant in his Bar pleads, that it is his Freehold; and after, in his Rejoinder, pleads Tender of Amends: Which is a Departure, and therefore naught. *Lutw.* 1262. But after a new Assignment, a Tender may be pleaded. *Ibid.*

For Departure in Pleading, See 2 Lev. 67.



# Distribution.

See Administrators.

**W**ere there are Grand-Children of an Uncle and Aunts, and a Son of an Uncle, living; all their Antecedents being dead, the Grand-Children cannot come in Jure Representationis, being in a Degree more remote than Brothers and Sisters-Children: Besides which Case, Representation doth not take Place, and then they are out of Equality of Degree. See the last Case in *Raymond*.

What the Degrees for Distribution are.

De

# Denizen.

Denizen: See { First Part 179.  
Alien.

**A Denizen, who.** **D**enizen, is where an Alien born becometh the King's Subject, and obtaineth Letters Patents to enjoy all Privileges as an Englishman; but if one be made Denizen, he shall pay Aliens Customs, and divers other Things as Aliens.

**A Devise of Land to a Denizen.** **L**ands may be devised to one made Denizen by Patent. 5 Rep. 52. a, b. 11 Rep. 67. b.

**A Denizen by Patent** may purchase Lands, but cannot inherit.

**Ancestors :** But he may as a Purchaser enjoy the Lands of his Ancestors. 11 Rep. 67. b. Co. Lit. 8. a. Cro. Fac. 539.

**The Issue born after Denization** shall inherit, not those born before.

**wise in case of Naturalizations.** Ibid. and 129.

**An Issue of an Englishman naturalized** shall inherit to his Father; but if denizen'd, not.

**What Son of a Denizen** shall inherit, and what not.

**youngest Son,** and not the eldest, shall inherit, Vaugh. 285.

Deila

# Delivery.

First Part 180.

Deed.

Date.

Ejectment.

Lease.

Power.

Delivery, See

After a Writing is signed, it is the Delivery which makes it a Deed, for without Delivery it is no Deed.

Delivery, what.

The actual Delivery of a Writing sealed to the Party is good, without any Words of Delivery. 9 Rep. 136. b. 137. a, b.

What Delivery of a Writing is good.

The Delivery of the Deed upon the Land without apt Words, (as in the Name of Seisin, &c.) will not amount to a Livery. 9 Rep. 137. b.

What Delivery of a Deed makes a Livery.

It hath been the Course in the Case of Ejectments, for the Lessor of the Plaintiff (or the Party to whom he makes a Letter of Attorney) to deliver the same upon the Land to the Lessee, which puts the Lessee into Possession; and whosoever afterwards comes upon the Land without his Consent, is an Ejector. But this Course is long since altered, except it be in some special Cases, as where the Tenant is run away, and the House is empty, and no Possessor to be found to deliver the Declaration to: For there, there must be a Lease sealed upon the Ground, and an Ejectment brought against the case of the Plaintiff; and the Court must be moved in it for Judgment.

Of Lease, Entry, and Outter:

And Delivery of Declarations in Ejectment upon the Land.



# Delivery.

Where a Man hath two Powers to deliver a Deed, he may make use of either.

of them he pleases, but not of both; for that which he makes Use of shall be effectual: For the Law will not allow of unnecessary or superfluous Acts.

Tenant for Life, Remainder in Fee, Leases.

If one hath an Authority under Hand and Seal to deliver a Deed to another, and also a verbal Authority to do it, he may make Use of which

A Lease made by Tenant for Life, Remainder in Fee, how it shall operate. See Leases.

See more in Title Power.

**Power.**

# Dower.

See First Part 180.

**D**ower, by the Law of the Land, is a Portion which a Widow hath of the Lands of her Husband; which by the Common Law, is the Third Part of all the Lands in Fee-Simple, or Fee-Tail, whereof the Husband was sole seized at any Time during the Coverture.

What Dower is.

Nothing in the Act of 4 & 5 W. & M. cap. 16. intituled, *An Act to prevent Frauds by clandestine Mortgages*, (which see in Title *Mortgages*) shall bar any Widow of a Mortgagor of Lands or Tenements from her Dower, and Right of, in, and to the mortgaged Lands (mentioned in the said Statute), who did not legally join with her Husband in such Mortgage, or otherwise lawfully bar and exclude her self from such her Dower or Right.

Stat. 4 & 5 W. & M. cap. 16. does not Bar the Wife of the Mortgagor of her Dower who did not join.

A Woman may be endowed of the Profits of an Office, or of a Fair or Market. *Plaf. 24 Car. 2. B. R.* Because it is an Inheritance, and may be reduced to a Certainty, sub modo.

And of the Profits of an Office, or Fair, or Market.

A Devise to a Wife, *Durante Viduitate*, is no Bar to her Dower, unless express'd in the Will, That if she claims her Dower, she shall lose the Thing devised to her. *Lutw. 735.*

Devise to a Wife, *Durante Viduitate*, is no Bar to her Dower.

*W. D.* Tenant for Life, Remainder to *J. S.* and his Heirs for the Life of *W.* Remainder to *W.* and the Heirs Males of his Body; Remainder over. *W.* marries the Demandant, and dies without Issue. And if his Wife should have Dower, was the Question, viz. If the Remainder to *J. S.* and his Heirs for the Life of *W. D.* was such an Interposing Estate

The Interposing Estate in Fee to preserve the contingent Remainder, Bars a Wife of her Dower.

Between

Between the Estate for Life of *W.* and the Remainder to the Heirs of his Body, that the Wife should not be endowed? And it was said for the Demandant, that all the Estate was really in *W.* and the Remainder to *J. S.* for the Life of *W.* was but a Possibility; that if *W.* should commit a Forfeiture, *J. S.* should take Advantage thereof for the Preservation of the Remainders: But in the mean time all the Estate is executed in *W.* As in *Lewis Bowle's Case*, where all the Estate was executed in the Father, until the Birth of a First Son. And altho' by this Possibility the Estate for Life of *W.* is not merged, yet the Tail is executed to such Purpose, that the Wife shall be endowed: But the Court notwithstanding gave Judgment for the Tenant. 3 *Lev.* 437.

An Intervening Estate for Years shall be no Hindrance of Dower.

This intervening Estate for Years is no Impediment to the Execution of the Estate Tail, nor shall be any Hindrance or Bar to the Wife's Dower. *Lum.* 729. to 733.

Dower shall be of a Third Part of a Reversion after a Term for Years, and a Third Part of the Rent.

What the Proceedings are, where the Husband died seized.

Whereupon there goes forth a Writ of Inquiry, Whether the Husband died seized, and what Time hath passed since he died, and what the yearly Value of the Land is, and what Damages the Demandant sustained, by Reason of the Dower not being set out? Which Damage being so found upon the

20 *H. 3. cap. 1.*

Where the Husband died seized, and the Tenant pleads, That he was always ready to render Dower: Then what the Proceedings shall be.

Where the Husband died seized, and upon declaring in Dower, the Tenant pleads, That he is, and always was, ready to render Dower; and Judgment be had thereupon: Then there goes an Inquiry of, What Damages only from the Time of the Teste of the Original in Dower to the Day of Inquiry? And Damages are to be found only for that Time.

Where Lands are limited to the Use of *A.* for Life, Remainder to *B. &c.* for Years, Remainder to the Heirs Males of the Body of *A.* *A.* Dies,

A Wife shall be endowed of a Third Part of a Reversion Expectant upon a Term for Years, and of the Third Part of the Rent reserved thereupon. *Lum.* 729.

If the Husband died seized, then upon a Judgment by Default in Dower, there must be an Award upon the Roll of such his dying seized. If the Husband died seized, and upon declaring in Dower, the Tenant pleads, That he is, and always was, ready to render Dower; and Judgment be had thereupon: Then there goes an Inquiry of, What Damages only from the Time of the Teste of the Original in Dower to the Day of Inquiry? And Damages are to be found only for that Time.

If the Husband did not die seized, and the Tenants (on the Declaration in Dower) suffer Judgment by Default, there are no Damages nor Costs, only Judgment for Seisin. See 2 *Instit.* 80. 1 *Instit.* 32. b. *Ec.*

How it is where the Husband did not die seized.

A Common Recovery had against Husband and Wife of the Husband's Lands, shall bar the Wife of her Dower, altho' she hath no Recompence in Value. 2 *Rep.* 74. *Plow.* 514.

A Common Recovery had against Husband and Wife, shall bar the Wife of her Dower, though she hath not Recompence.

A Writ of Dower cannot be brought against Tenant by *Elegit*, or Tenant for Years. 9 *Rep.* 17. a.

Lies not against Tenant by *Elegit*, or for Years.

*Ne unques accouple* in loyal Matrimony, with the Bishop's Certificate, and Judgment thereupon. 9 *Rep.* 19. b.

*Ne unques accouple*, and Bishop's Certificate.

If Tenant in Dower ploughs up Meadow or Pasture, it is Waste: Because it alters the Evidences of the Land, which a Tenant in Dower cannot do, but must leave it as she found it. *Co. Litt.* 53. b.

Tenant in Dower cannot plow Pasture, &c. it is Waste in her.

The Wife of the Conuzee of a Fine shall not be thereof endowed, because it is but a fictitious Seisin. *Vaugh.* 41.

The Wife of a Conuzee in a Fine shall not be endowed of it.

**Devise.**



# Devise.

Devise, See

First Part 183.  
 Limitation.  
 Wills.  
 Partition.  
 Lease.  
 Remainder.  
 Ventr.  
 Executors.

What a Devise is.

What a Bequest is.

his Goods by his Will.

A Devise of Lands till 200*l.* be raised, shall be intended until it may be levied.

What Remedy against the Heir.

pass, or enter and hold the Land until he hath received the whole Money. 4 Rep. 82.

The Intent of the Testator is the Expositor of the Will.

Where there must be Notice of a Devise.

Stat. 4 & 5 W. & M. cap. 14. For Relief of Creditors against fraudulent Devises.

A Devise, properly is where a Man gives away his Lands by his Will. And a Bequest, is properly where a Man gives away

A Devise of Lands until 200*l.* be raised, shall be intended until it may be raised. 4 Rep. 81. b. 82 a. And in such Case, if the Heir, or he in Reversion, enter upon the Devisee to such Uses, and keep him out, then he may either have an Action of Trespass, or enter and hold the Land until he hath received the

The Intent of Testators are the Expositors of Devises. Lutw. 763.

Where there must be Notice given of a Devise, otherwise it is no Forfeiture. Lutw. 813.

By an Act made 3 & 4 W. & M. cap. 14. entitled, An Act for Relief of Creditors against fraudulent Devises: It is enacted, That all Wills, Limitations, Dispositions or Appointments,

of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, or of any Rent, Profit, or Charge out of the

the same, wherof any Person or Persons at the time of his, her, or their Decease, shall be seized in Fee-Simple, in Possession, Reversion, or Remainder, or have Power to dispose of the same by his, her, or their last Wills or Testaments, to be made after the 25th of March, 1692. shall be deemed and taken (only as against such Creditor who shall have a just Debt, his Heirs, Successors, Executors, Administrators, and Assigns, and every them) to be fraudulent, and absolutely void; any Pretence, Colour, feign'd or presumed Consideration, or any other Matter or Thing, to the contrary notwithstanding.

Where fraudulent against Creditors who have just Debts.

And every such Creditor shall and may maintain his, her, and their Actions of Debt, upon his, her, or their Bonds and Specialties, against the Heir and Heirs at Law of such Obligor, and such Devisee and Devisees, jointly by Vertue of this Act. And such Devisee or Devisees shall be liable and chargeable for a false Plea by him or them pleaded, in the same manner as any Heir should have been for an false Plea by him pleaded, or for not confessing the Lands or Tenements to him descended.

How the Creditors may sue.

How chargeable for a false Plea.

See Title Heir.

Provided, that it shall not extend to any Limitation for raising of Portions for any Child or Children, other than the Heir at Law, in pursuance of any Marriage Agreement made before Marriage, or for Payment of any just Debts. See Title Heir. This Act is made Perpetual, by an Act made 6 & 7 W. cap.

Not to extend to raising Childrens Portions upon any Marriage Agreement, or Payment of just Debts.

A Devise to a Son and Heir in Fee, being no other than what the Law gave him, is void. *Vauh. 271.*

A Devise to an Heir, is void.

A Man devises to his eldest Son, paying so much yearly; altho' the Annual Profits of the Land exceed the Money to be paid, yet the Devisee hath a Fee. *3 Rep. 21.*

A Devise to the eldest Son, paying so much yearly where it is a Fee.

The Word, *Paying*, in a Will, when to be construed a Condition, and when a Limitation. *3 Rep. 21.*

When the Word, *Paying*, in a Will is a Condition, and when a Limitation.

A Devise of Land paying, &c. where for Life; where in Fee.

so much to one, and so much to another: This is but for Life, for he is sure no Loss can happen, because it is to be paid out of the Profits; but where the Party may die after Payment, and before Satisfaction received, it is a Fee-Simple. Because the Law intends it for his Benefit, not for his Dammage. 6 Rep. 16. a.

A Devise may be to an Use.

A Devise to one Daughter.

Heirs. The Devisee shall take the whole: For where ever a Devise is of the Whole to an Heir, there the Devise is void. But where Part is devised to the Heir, there he shall take the Whole by Purchase. Hill. 1 Anna B. R.

A Devise of Lands for ever is a Fee.

Because otherwise the Word Imperpetuum cannot be performed. Keil. 143. b. 44. a.

An Administrator of a Term cannot devise it, but an Executor may. But may sell all.

How the Assent of the Executor must be to a Devise of a Term.

By the Assent of the Executor, the Executory Devise cannot be barred.

An Executory Devise how to take Place.

ing without Issue: Because that would make a Perpetuity. 1 Lev. 136.

No Executory Devise upon an Estate Tail.

where A. devises Lands to his Brother, to the Intent that with the Profits he shall Educate his Son, or out of the Profits of the Land, to pay

A Devise may be to an Use, and be so executed. Lum. 823.

A Man seized in Fee, had only Two Daughters, and devises all his Lands to one of his Daughters, and her

A Devise to A. B. of Lands Imperpetuum, the Devisee shall have a Fee: Because otherwise the Word Imperpetuum cannot be performed.

An Administrator of a Term, or an Executor, may in his Life-time sell it, and the Sale shall be good. But

devise it, he cannot; because the Devise doth not take effect till his Death.

How the Assent of the Executor is to be to a Devise of a Term. 1 Leo. 25. 2 Plow. 519. a.

After the Executor has assented to the first Devise, it lies not in the Power of the first Devisee to bar him who hath the future Devise. 8 Rep. 96.

An Executory Devise shall be allowed to take Place within the Compass of one Life, but not after a dying without Issue.

An Executory Devise cannot be upon an Estate Tail. Vaugh. 273.

Where Lands are devised to be sold by Executors, and the Money distributed to certain Uses. It is not a Legacy to be sued for in the Ecclesiastical Court, but only in Chancery. Ho. 265.

Devise of Lands to be sold, and says not by whom, *The Heir must sell*. But a Devise of Lands to be sold for Payment of Debts, and says not by whom, the Executor must sell. 1 Lev. 304.

A Devise of a Term for Years to his Son, for all the Years to come after the Death of his Wife. This is a good Devise, and the Son shall not take as a Remainder, but by Executory Devise. But this could not be by any Grant or Conveyance at the Common Law. 8 Rep. 94. b. 95.

When the Wife dies, this vests in the Son as an Executory Devise: As if he had devised, that after his Son had paid so much to his Executors; or that after the Death of B. A. should have the Term, &c. In these are Executory Devises. 8 Rep. 95. b.

A Devise shall never be construed to be an Executory Devise, where it may be taken otherwise.

A Devise, that if the Son and Heir pay not all the Legacies, the Land shall go to the Legatees. This, upon Default of Payment, shall vest in the Legatees by Executory Devise. Vaugh. 271.

A Devise to A. and his Heirs, as long as B. hath Heirs of his Body, the Remainder over; such latter Devise is good, tho' not as a Remainder, yet as an Executory Devise: Because somewhat remained to be devised, when the Estate in Fee determined upon B. not having any Issue. Vaugh. 270.

A Contingent Remainder may be destroyed by a Common Recovery, but an Executory Devise cannot. See Saund. 390. 2 Lev. 39. For a Re-

Where Lands are devised to be sold by the Executors, and the Money to be distributed; where to be sued for.

Where it is for Payment of Debts, Executor must sell.

Devise of a Remainder of a Term is good by Executory Devise, not as a Remainder.

Where it vests as an Executory Devise, and when. What are Executory Devises.

and such like Cases they

What shall be an Executory Devise.

Where upon a Default of Payment, a Legatee shall take by Executory Devise.

Vaugh. 271.

A Devise not good as a Remainder, but good by Executory Devise.

Because somewhat remained to be devised, when the Estate in Fee determined upon B. not having any Issue.

A Recovery will not destroy an Executory Devise.



covery bars only where there is a Privy in Law, as he in Remainder or Reversion. *Carter 33.*

A Devise of a Term in Tail shall go to the Executors.

is but a Chattel, which cannot be entailed, and the Devisee may dispose of it as he pleases.

Estates by Implication may be by Will, not by Deed.

sary Implication is, That the Devisee must have the Thing devised, or none else can have it. *Vaugh. 261, 262, 263, &c.*

Equity will not help Devise of a Possibility.

A Devise of 500 l. if she attain 21. If she dies before, the Legacy is gone.

Where it is *Debitum in presenti solvendum in futuro*, and her Administrator shall have it.

A Devise to a Man and his Heirs, Devisee dies in the Life of the Devisor.

Devisor's Life-time, having Issue, a Son. Then the Devisor dies. And held, that by the Death of D. in the Life of the Devisor, the Devise became void. Also, that the after-bought Land should not pass in the Devise. *Brett and Rigden. 1 Plow. from 342, to 345. See Carter 2, 3, 4. Davy and Kemp.*

A Devise of all his Lands in D. and afterwards he purchaseth other Lands in D.

A Devise to Two, One dies before the Devisor, the Survivor shall have the Whole.

If a Term is devised to a Man, and the Heirs Males of his Body, his Heir Male shall not have it, but it shall go to his Executors. For a Term

Estates by Implication may be by Will, but not by Deed. *2 Lev. 79.* But when they are allowed in Wills, it is with due Restrictions; a neces-

Equity will not make good a Devise of a Possibility. *3 Lev. 427.*

A Man devises 500 l. to his Daughter, if she shall attain her Age of 21 Years. Now if she dies before she attains that Age, the Legacy is gone: But if the Devise had been to be paid her at her Age of 21 Years, then it is *Debitum in presenti solvendum in futuro*, and her Administrator shall have it if she dies before 21.

A Man devises to D. and his Heirs all his Lands in B. and elsewhere in *Com. Kent.* and afterwards buys more Land in B. and then D. dies in the

A Man devises all his Lands that he hath, or should have, at the time of his Death: His after-purchased Land shall not pass by this Devise. *Earle's Case, 4 Jac. 2. in B. R.*

A Devise of Lands to Two, One dies before the Testator, the Whole survives. *Shon. R. 91.*

A Man makes his Will, which is attested and subscribed by Two Witnesses in the Testator's Presence; afterwards he makes a Codicil, confirming this Will in several Particulars, and is attested and subscribed in the Testator's Presence by Two Witnesses; one whereof was a Witness to the Will. This is not a good Will, it not being attested and subscribed by Three Witnesses. *Shon. Rep. 69, 88.*

A Will of Lands with Two Witnesses; and after, a Codicil with Two Witnesses will not do.

If the Father devises his Lands to J. S. during the Minority of his Son and Heir, in Trust for his Heir, and for his Maintenance and Education until he be of Age. This is no devising of the Custody within the Statute, 12 Car. 2. cap. 24. for he might have done this before the Statute. *Vaugh. 184.*

A Devise in Trust during the Minority of his Son, and for his Education.

The Act of 12 Car. 2. did not intend, that every Heir should be in Custody until One and twenty; Therefore he shall be in this Custody but so long as his Father appoints; and if he appoints no Time, there is no Custody. *Vaugh. 185.*

12 Car. 2. cap. 24.

How long an Heir shall be in Custody.

If the Father appoints the Custody till 21, and if the Guardian dies before the Heir comes to 21; the Guardianship determines with the Death of the Guardian, and is a Condition in Law. *Vaugh. 185.*

How, where no Time is appointed.

How it is when the Guardian dies.

Depositions, See { First Part 182.  
Evidence.

# Deodands.

## Deodands, Sec. First Part.

What a Deodand is.

A Deodand, is when any man kills himself, or is by Distortune slain by an Horse, Cart, or any other Thing that moveth to his Death; then the Thing which is the Cause of, or moveth to his Death, shall be forfeited to the King, or Grantee of the Crown: But the Almoner disposes of what belongs to the King.

What are Deodands, and to whom they belong.

Deodands, were the Goods and Chattles of a *Felo de se*; (that is) of him that kills himself, or is killed by any Accident; and, upon Inquisition thereof found, before the Coroner, they do belong to the King, or to the Lords of the Manors, who have the Grants thereof enrolled in the Crown-Office. But as to those which belong to the King, he appoints his Chief Almoner to dispose of to the Poor, or to be employed in other Pious Uses. And a Discharge given for them by the Almoner, or his Deputy, or such Lord of a Manor, to any Person that hath such Goods of a *Felo de se* in his Possession, is a good Discharge in Law for them: But a Discharge given for them by an Under-Deputy, is no good Discharge; for he is no such Officer as the Law takes Notice of.

All Persons who have Grants of Deodands, may plead the same:

4 & 5 Ed. 3. cap. 22. sect. 1, 3.

and had the same allowed, shall plead the same to any Inquisition returned by the Coroner.

How those Grants to be inrolled, and what Fees to be paid for them.

By an Act made 4 & 5 W. & M. cap. 22. sect. 1, 3. entitled, *An Act for Regulating of Proceedings in the Crown-Office of the Court of King's Bench*; it is enacted, That all Persons who have Grants of Deodands Inrolled,

Also, any Corporation or Person, who now have, or shall have, such Grant from the Crown, of Deodands,

Felons

Felons Goods, and other Forfeitures, need not to Inrol more of them, than to express and set forth the Grant of such Goods, for which he shall pay 20 s. and no more; and after such Inrolment, no such Grantee shall be compelled to plead the same in the said Court to any Inquisition.

The Fees for the Inrolment.

That if, after such Inrolment or Entry, Process shall Issue against such Grantee of Deodands, Felons Goods, and other Forfeitures, he shall forfeit, and pay to the Party grieved 5 l. to be recovered in any of the Courts at Westminster, by Bill, Plaint, or Information.

The Penalty of suing out of Process against any Grantee afterwards.

And the Clerk of the Crown shall not incur any Penalty for issuing out of Process against any Person, who shall not, upon every Purchase of Deodand, Inrol and plead the same; nor against the Heir, who shall not Inrol his Right by Descent.

Where the Clerk of the Crown may sue out Process.

*Bona & Catalla Felonum de se* do not pass by a Grant from the King, *Bona & Catalla Felonum* only. Surron's Case, 1 Sand. 274.

How *Bona & Catalla Felonum de se* pass.

Denur=

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# Demurrer,

## Demurrer, Sec. { First Part 186. Abatement.

**What a Demurrer is.** **D**emurrer, is when any Action is brought, and the Defendant saith, That the Plaintiffs Declaration is not sufficient for him to answer to: Or when the Defendant pleads, and the Plaintiff says, That it is not a sufficient Plea in Law; and the Defendant says, That it is a good Plea; and thereupon both Parties submit to the Judgment of the Court: And this is a Moratur in Lege.

Where Judgment shall be given upon a Demurrer, either for Plaintiff or Defendant, there shall be Costs.

879 Ill. 3. ca. 10.

There can be no Demurrer where the Issue is perfect; but only where there is something to come afterwards.

had been to come and say *Similiter*, &c. as in an Issue in Fact; there, upon striking out of the Word *Similiter*, &c. the Demurrer would have been admitted, but here it cannot.

No Advantage to be taken to a Fault in a Declaration, on a Demurrer to a Plea in Abatement.

the Declaration, if he pleaseth, 6 W. & M.

If any Person shall commence or prosecute in any Court of Record, any Action, Plea or Suit, wherein upon a Demurrer, either by Plaintiff or Defendant, Judgment shall be given by the Court against such Plaintiff, the Defendant shall have Judgment to recover his Costs, and shall have any Execution for the same. Stat. 8 & 9 W. 3. cap. 10.

The Defendant pleads *Nul tiel Record* to a *Scire Facias*. The Plaintiff replies, *Quod tale habetur Recordum*. The Defendant demurs, *Curia*, he hath no Time to demur, because the Issue is perfect: But if the Defendant

Where there is a Demurrer to a Plea in Abatement, you shall not take any Advantage of a Fault in the Declaration: But upon the *Respondes Ouster*, the Defendant may demur to the Declaration, if he pleaseth, 6 W. & M.

Where the Conclusion of the Demurrer is in Abatement, and the Commencement in Bar, the Judgment shall be Peremptory. 1 Lev.

By the Statute of 27 Eliz. cap. 5. and Rules of this Court: And now by the Stat. of 4 & 5 Anna. for the Amendment of the Law: The Causes of Demurrer ought to be specially shewn, and not the general Expressions of *Causa forma*, or *Duplex & incertum*, or that it is a Negative pregnant: But he that demurs, must shew specially and particularly for what he demurs, otherwise no Advantage shall be taken of such Defects or Imperfections. *Lutw. 4. Lea. 132, 199, 196. See Postea* in this Title: And also how Judgment shall be given upon Demurrers.

Where the Conclusion of the Demurrer is in Abatement, and the Commencement in Bar, the Judgment shall be Peremptory.

The Causes of Demurrer ought to be specially shewn, and not generally, with *Duplex*. &c.

Where a Man pleads a Lease for a Year, and a Release and Confirmation, the Plaintiff demurs, and shews for Cause that it was double, *Curia*, so it is if you had demurred as you ought to have done: For you ought to have shewn in what it was double, or by pleading both a Release and Confirmation, when either of them would have done. But as the Demurrer was general for Duplicitie, and saying no more, it shall extend no farther than to a general Demurrer. *P. 4. 137. B. R.*

Demurrer for double Pleading.

How to be shewn in what it is double.

A Demurrer may be to a Writ after Oyer and Entry of Record. *Lutw. 1644.*

A Demurrer to a Writ.

How the Judges shall proceed to give Judgment upon a Demurrer:

4 & 5 Anna.

Without Regard to any Defect in any Declaration.

By the Act for the Amendment of the Law, 4 & 5 Anna. it is enacted, That where any Demurrer shall be joined and enter'd in any Suit in any Court of Record, the Judges shall proceed and give Judgment, according as the very Right of the Cause and Matters in Law shall appear to them, without regarding any Imperfection, Omission or Defect, in any Writ, Return, Plaint, Declaration, Pleading, Process, or Course of Proceeding whatsoever, except those only which the Party demurring shall particularly and specially set down, and expresse, together with his Demurrer, as Causes of the same: Notwithstanding that such Imperfection, Omission

Except those particular-  
ly shown for Cause.

Notwithstanding it might  
have been Substance, not  
aided by the Statute of  
17 Eliz.

In what other Matters  
no Advantage shall be ta-  
ken :

Of immaterial Traverse

Defect of Pledges

For not bringing the  
Bond into Court.

Of Letters Testamentary :

Or of Administration :

Or Omission of *Vs &*

Or of *contra Pacem* :

Or of *hoc Paratus est ve-*  
*rificare* :

Or of *hoc Paratus est ve-*  
*rificare per Recordum* :

Or of *proit patet per Re-*  
*cordum* :

without regarding any such Imperfections, Omissions and De-  
fects, or any other Matter of the like Nature, except particu-

larly set down and shown for Cause of  
Demurrer. *Stat. 4 & 5 Anna.*

4 & 5 Anna.

Demurrer to Evidence by  
Plaintiff and Defendant.

Upon a Demurrer

true, he may demur thereupon : Because Matters of Law shall  
not be put into the Mouths of Lay-Gents. *3 Rep. 104.* So also

the Plaintiff may demur upon the Defendant's Evidence, *Mura-*  
*sis Murandis. Ibid.*

Demurrer to a Writ of  
Affize, and Return of it.

Respond. Ouster.

Respond. Ouster.

Respond. Ouster.

Respond. Ouster.

Omission or Defect, might have here-  
tofore been taken to be Matter of Sub-  
stance, not aided by the Stat. of the  
27 Eliz. so as sufficient Matter appear  
in such Pleadings, upon which the  
Court may give Judgment, according  
to the very Right of the Cause.

That no Advantage or Exception  
shall be taken to or for any Immate-  
rial Traverse, or of or for the Default  
of entering of Pledges upon any Bill  
or Declaration ; or for the not alledg-  
ing of the bringing into Court of any  
Bond, Bill, Indenture, or other Deed  
mentioned in the Declaration, or other  
Pleadings ; or for the not alledging of  
the bringing into Court of Letters Te-  
stamentary, or of Administration ; or  
the Omission of *Vs & Armis*, and *con-*  
*tra Pacem*, or either of them ; or for  
want of Averment of *Et hoc Paratus est*  
*verificare*, or *hoc Paratus est verificare*  
*per Recordum* ; or for want of *proit pa-*  
*tet per Recordum*. But that the Court  
shall give Judgment according to the  
very Right of the Cause as aforesaid,  
without regarding any such Imperfections, Omissions and De-  
fects, or any other Matter of the like Nature, except particu-  
larly set down and shown for Cause of  
Demurrer. *Stat. 4 & 5 Anna.*

If the Plaintiff produce Evidence to  
prove any Matter of Fact upon which  
a Question in Law arises, if the De-  
fendant admits the Testimony to be  
true, he may demur thereupon : Because Matters of Law shall  
not be put into the Mouths of Lay-Gents. *3 Rep. 104.* So also

the Plaintiff may demur upon the Defendant's Evidence, *Mura-*  
*sis Murandis. Ibid.*

Demurrer to a Writ of Affize,  
and the Return of it. *1 Plow. 73. b.*

and a Respond. Ouster awarded. *Id.*

Respond. Ouster. *77. a.*

Id.



# Devastavit.

Devastavit, See Executor. Administrator.

**A Devastavit, is the wasting of Goods by Executors or Administrators, in not paying of Debts upon Judgments and Statutes before Debt upon Bond and Simple Contracts; or keeping of the Goods in their Hands, and not paying of the Debts; or selling of them, and not paying of Debts.**

An Executor shall be charged in the *Debet* and *Detinet* in an Action upon a *Devastavit*, where the Action is brought upon a Judgment. But it will not lie where the Action is upon a Bond: Because the Court will not extend it farther than to a Judgment.

1 Lev. 147. 2 Lev. 145. See Carter, Fol. 2.

An Executor shall be charged in the *Debet* and *Detinet* for a *Devastavit*, upon a Judgment recovered against him as Executor. 1 Lev. 255.

An Executor wastes Goods, and dies, and leaves an Executor and Assets, his Executor shall be chargeable.

An Executor compounds an Action of Trover for the Testator's Goods, for a Sum of Money to be paid in Futuro. This is a *Devastavit* presently:

For he by Acceptance of a new Security, hath converted them to his own Use; and is quasi a Sale of them, and Assets presently, although the Money is payable for them in Futuro. 2 Lev. 189, 190.

Executor shall be charged in the *Debet* & *Detinet* in a *Devastavit*.

It will not lie, but upon Judgment on Bond.

So where a Judgment is recovered against him as Executor.

Executor of an Executor, where chargeable.

Where an Executor compounds, it is a *Devastavit*.



## Debatte:

**The Husband not to be charged with a *Deuslovit* after the Death of a Feme Executrix.**

Executor *de jure* who  
commits a Druslovit, and  
dies.

30 Car. 2. Cap. 7.

**Executor pays Debts upon Simple Contracts, before Notice of Bonds.**

Debes of equal N  
Notice. 2 Lrv. 154.

The Husband shall not be charged after the Death of his Wife Executrix, with a Suggestion of a *Devastavit* in a Declaration against him.

~~Executors~~ *de jure* wastes the Goods, and leaves Affsets, his Executor or Administrator shall be charged, *2 Lev. 133. by the Stat. of 30 Ca. 2.*

Executoꝝ pays Debts upon Simple Contracts, before Notice of Bonds; this is no *Deceit*: But *per Levin*, it shall be only where the Executor

Execution shall be done  
and in the Court of  
the said County.

It will not be, but upon  
Independent on Bond.

So while a judgment is recovered against him as

Where characteristic  
 Recorder of an Executor

...it is a beautiful...

and at the same time  
and at the same time  
and at the same time

3400

# Discharge,

Discharge, See { First Part 191.  
Agreement.  
Bail.  
Promise.

**D**ischarge, is properly where a Man is confined by some Legal Writ or Authority, and he doth what by Law he is required to do ; then he is discharged from that Matter for which he was confined.

*Discharge, Quid.*

If an Attachment be granted by the Court against one, and he is thereupon taken, he shall not be discharged upon an Affidavit made on his Behalf : But he must appear in Person in Court, and be there discharged or committed, or else bound over to answer Interrogatories, and be fined, if he be reported Guilty : For it is a Personal Offence for which he is attached ; and he shall not therefore be discharged, until he yield Obedience in Person to the Court, and be by the Court discharged.

Where a Man is taken upon an Attachment, he must appear in Court.

Payment of the Money due upon the Judgment, is no Plea to a *Scire Facias*. 1 Mod. 194. But in a *Scire Facias* against the Bail, they may in their Discharge plead, That the Principal paid the Money : Because the Words of the Condition of the Recognizance are, That the Principal shall render his Body to Prison, or pay the Condemnation, or the Bail will do it for him : So that if the Principal pays the Condemnation, he hath performed the Condition of the Recognizance. But now by the Stat. of 4 & 5 Anne, ca... Payment is a good Plea to a *Sci. Fa.* upon a Judgment.

Payment was formerly no Plea to a *Sci. Fa.* except only in case of Bail : But now it is a good Plea.

Stat. 4 & 5 Anne, ca.  
64.



# Disseisin, and Disfeisin.

See First Part 195.

**A Disseisor, is he who enters and puts a Span out of his Freehold, without Order of the Law. Co. Litt. sect. 279. viz. where his Entry is not lawful.**

Who is a Disseisor?

**A Disseisor's dying seized, unless above Five Years after the Disseisin, doth not take away an Entry. 32 H. 8. cap. 33.**

When a Disceint takes away an Entry.  
32 H. 8. cap. 33.

**When a Feoffor after the Feoffment enters and takes the Profits, and makes a Lease for Years, the Law adjudges this to be a Disseisin; although the Intent of the Parties was, make a Lease to the Feoffor for Life.**

Where a Feoffor enters after his Feoffment, it is a Disseisin.

**That the Feoffee should 2 Rep. 59.**

**Tenant for Years surrenders his Term to the Lessor, and continues still in Possession, and pays his Rent: This is no Disseisin; because it amounts to a new Lease. Cro. Jac. 304.**

Tenant for Years surrenders, but continues in Possession, and pays Rent, it is no Disseisin.

**A Lease to commence at Michaelmas, is a future Interest: The Lessor enters before Michaelmas, and continues the Possession after Michaelmas: It is all a Disseisin, but it was not turned to a Right by the Lessor's Entry: Because he never was possess'd by Vertue of the Term, but by Disseisin. And here the Lessee may assign his Term over without Entry: Because he had never enter'd. 1 Lev. 46, 47. But where the Lessor enters upon the Lessee's Possession, this turns the Lessee's Estate to a Right, so that he cannot assign his Term off from the Land, 1 Lev. 46.**

A Lease to commence in Future.  
Entry before the Commencement, is a Disseisin.



How a Fine levied by a Disseisor shall operate.

A Disseisor levies a Fine, and declares the Uses to the Convees; this shall not enure to the Disseisor: But if no Uses had been declared, it would have been to the Use of the Disseisor, and extinguished the Rights of the Disseisee, 1 Lev. 130.

Trespas lies against a Disseisor and his Servants.

If one disseise me, and during the Disseisin cuts down the Trees or Grass, &c. growing upon the Land, and afterwards I Re-enter, I shall have Trespas against him: For after my Regress, the Law, as to the Disseisor and his Servants, supposes the Freehold to have always Continuance in me: But if my Disseisor makes a Feoffment in Fee, Gift in Tail, or Lease for Life or Years, I shall not have Trespas against those who come in by Title, 1 Co. Rep. 31: Keilw. 1. b.

But lies not against his Feoffee or Lessee.

And why. 1 Co. 1. b.

But in this Case, I shall recover all the Meine Profits against the Disseisor himself. 12 Rep. 5. a. & the Bottom.

**Disfranchisement, See Corporations.**

Where a Feoffee enters after his Feoffment, it is a Disseisin.

That the Feoffee should 2 Rep. 22.

Tenant for Years for-  
feited, and continues in  
Possession, and pays Rent,  
it is no Disseisin.

A Lease to commence in  
Future.  
Party before the Com-  
missionment is a Disseisin.

Distress  
A Right by the Lessor's Entry: Because he never was turned out of the Term, but by Disseisin. And here he had never entered, 1 Lev. 46. 47. But where the Lessor enters upon the Lessor's Possession, this turns the Lessor's Estate into a Right, so that he cannot assign his Term off from the Land, 1 Lev. 46.

# Distress for Rent.

## See Rent.

**D**istress, is a Thing which is taken and distrained upon Land for Rent behind, or other Duty or Damage done upon the Land, although the Property of the Thing belongs to a Stranger; but where they are Strangers Cattle, they ought to be Levant and Couchant upon the Land, so long as they have well rested themselves there; or else they are not distrainable for Rent or Services.

A Distress, what must be Levant and Couchant.

Cattle, which were driving to London to be sold, were lodged in a Close upon the Road, and were there distrained for the Rent of the Land, and held that they are distrainable: Because, says the Book, it is not reasonable that the Cattle, coming to London from all the remote Parts of the Kingdom, should be privileged from a Distress for the Landlord's Rent for all the Way that they come. 3 Lev. 260, 261. But afterwards (as I heard) it was upon a Bill in Chancery, brought by the Grazer against the Distrainer, decreed, That he should be repaid the full Value of his Cattle, and also all his Charges at Law and in Equity.

Cattle driving to London, are distrainable for Rent.

Executors of Tenant for Life; are within 32 H. 8. cap. 37. and may distrain for Rent due to the Testator. Law. 1230.

Executors of Tenant for Life, may distrain for Rent. 32 H. 8. cap. 37.

Two Distresses cannot be taken for one Rent, if there were sufficient Goods when the first Distress was made: Because it was a Policy of the Party who had not taken a sufficient Distress at the first. Law. 1336. But if there were not sufficient Goods when the first Distress was taken, he may distrain again.

Two Distresses must not be taken for one Rent, if there be Goods sufficient.

Where Cattle must be Levant and Couchant, and where not.

An Exposition of the Stat. of 2 W. & M. Sess. 1. cap. 5. What Corn is distrainable, and where Notice to be given.

more fully, 4 Mod. from 385. to 395. What Things are distrainable, and what not.

What Goods are distrainable for Rent.

3 W. & M. Sess. 1. cap. 5.

When and where Notice to be given.

When to sell the Distress, and how to be.

When and where Notice to be given. When to sell the Distress, and how to be. Hundred, Parish or Place where such Distress shall be taken, and who are hereby commanded to be aiding and assisting therein, cause the Goods and Chattels so distrained to be appraised by Two Sworn Appraisers (whom such Sheriff, Under-Sheriff or Constable, are hereby impowered to swear), to appraise the same truly, according to the best of their Understanding; And after such Appraisement made, may lawfully sell the Goods and Chattels so distrained for the best Price can be gotten, towards Satisfaction of the Rent for which they shall be distrained; and of the Charges of such Distress, Appraisement and Sale, leaving the Overplus in the Hands of the Sheriff, Under-Sheriff or Constable, for the Owner's Use.

In what Cases Cattle must be Levant and Couchant, before they can be distrained for Lords, or other Rent, and in what not. Luth. 1577. to 1581.

An Exposition of the Statute of 2 W. & M. Sess. 1. cap. 5. and what Corn and other Things are distrainable, and when: And where Notice is to be given to the Owner, and where not. Luth. 214, 215. See for this more fully, 4 Mod. from 385. to 395. What Things are distrainable, and what not. See Co. Litt. 47. a, 4.

By the Statute of 2 W. & M. Sess. 1. cap. 5, it is enacted, That where any Goods or Chattels shall be distrained for any Rent reserved, and due upon any Demise, Lease or Contract whatsoever; and the Tenant or Owner of the Goods so distrained, shall not within Five Days next after such Distress taken, and Notice thereof, with the Cause of such taking, left at the chief Mansion-House, or other most notorious Place upon the Premises, charged with the Rent distrained for Replevy, the same with sufficient Security to be given to the Sheriff according to Law: Then after such Distress and Notice as aforesaid, and Expiration of Five Days, the Person distraining shall and may, with the Sheriff or Under-Sheriff of the County, or the Constable of the Hundred, Parish or Place where such Distress shall be taken, and who are hereby commanded to be aiding and assisting therein, cause the Goods and Chattels so distrained to be appraised by Two Sworn Appraisers (whom such Sheriff, Under-Sheriff or Constable, are hereby impowered to swear), to appraise the same truly, according to the best of their Understanding; And after such Appraisement made, may lawfully sell the Goods and Chattels so distrained for the best Price can be gotten, towards Satisfaction of the Rent for which they shall be distrained; and of the Charges of such Distress, Appraisement and Sale, leaving the Overplus in the Hands of the Sheriff, Under-Sheriff or Constable, for the Owner's Use.

Also, that it may be lawful for any Person, having Rent due upon any such Demise, Lease or Contract, as aforesaid, to seize and secure any Sheafs or Cocks of Corn, or Corn loose or in the Straw, or Hay lying and being in any Barn or Granary, or upon any Hovel, Stack or Rick; or otherwise, upon any Part of the Land charged with such Distress: And to lock up and detain the same in the Place where the same shall be found, for or in the Nature of a Distress, until the same shall be replevied upon such Security as aforesaid: So as nevertheless such Corn, Grain or Hay, so distrained as aforesaid, be not removed by the Persons distraining, to the Damage of the Owner thereof, out of the Place where the same shall be found and seized; but be kept there as impounded until replevied or sold, in Default of Replevying within the Time aforesaid.

To distress Corn in Sheafs.

Or in the Straw or Hay in a Barn, &c.

What to do with it when distrained;

That upon any Pound Breach, or Rescous of Goods or Chattels distrained for Rent, the Person grieved shall have a special Action on the Case for the Wrong thereby sustained, and recover treble Damages and Costs of Suit against the Offendor and Offendors, in any such Rescous and Pound Breach, any or either of them, or against the Owner or Owners of the Goods distrained, in case the same be afterwards found to come to his Use or Possession.

Where there is a Pound Breach.

With treble Damages.

Provided, That in case any such Distress and Sale as aforesaid shall be made by Vertue or Colour of this Act, for Rent pretended to be in Arrear, and due; whereas in Truth no Rent is Arrear, or due to the Person distraining, or to him, or them, or those, in whose Name or Names, or Right, such Distress shall be taken as aforesaid: That then the Owner of such Goods and Chattels distrained and sold as aforesaid, his Executors and Administrators, shall and may, by Action of Trespass, or upon the Case, to be brought against the Person or Persons so distraining, any or either of them, his or their Executors or Administrators, recover the double Value of the Goods distrained and sold, together with full Costs of Suit.

There must be Rent due.

The Penalty, if no Rent due.



## Distress for Rent:

**There can be no Distress for Rent, where there is no Reversion.**

Lease for Years grants away all his Term to another, rendering Rent, he cannot distrain for this Rent: Because he hath no Reversion in him; but Debt will lie for it as a Sum in Grati. 2 Lev. 80.

At the same Hall I observed upon  
the wall the picture of a Dutch  
woman in the manner of a Dutch  
place where the time shall be found.  
with such Difficulties And to look up and down the same in the  
black; or otherwise upon any part of the Land changed  
not being in my Brother's Country as upon any House, which

~~It is removed by the Boston Customhouse, to the Customhouse  
at the corner of the Block and the Court Street.~~

Where there is a house  
Breach.

**Distress,**

[illegible][illegible]

Y 2

# Distress, and Distringas.

Distress, and Distringas, See } Amercement.  
 } Leet.  
 } View.  
 } First Part 195.

**A** Man may distrain the Cattle or Goods of any Man doing Damage actually upon his Ground; but if Cattle are upon my Ground, and I go to distrain them Damage feazant, and the Owner or other Person drives them away, I may pursue, and take and impound them: Also for Fines and Amercements in a Leet, the Goods of him so amerced may be taken away, in whose Ground they are within the Jurisdiction of the Court.

Distringas Juratores, is where an Issue in Fact is joined to be tried by a Jury, which is returned by the Sheriff in a Panel upon a Venire Facias for that Purpose; and thereupon there issues out a Writ of Distringas Juratores to the Sheriff, commanding him to have their Bodies (if upon a Trial at Bar) in Court at the Return of the Writ, (if at Nisi Prius) then upon the Day of the Trial at the Assizes.

Distress and Sale of Goods upon the Breach of a By-Law, is naught; it should be a Distress only. 3 Lev. 281.

Trespass lies not for taking of a Distress in one County, and impounding of it in another; but only an Action upon the Statute of 1 & 2 Philip & Mary, cap. 12. 3 Lev 48.

Y 3

Distress and Sale of Goods upon a By-Law, is naught; must be Distress only.

What Remedy for taking a Distress in one County, and impounding of it in another.

1 & 2 Ph. & M. cap. 12.

A

# **Distress, and Distringas.**

Where a Commoner may distress.

A Commoner may distress a Stranger's Cattle, and avow, shewing a Damage to himself; or have an Action on the Case, if he can alledge any Damages to himself, *viz.* That he could not have his Common in this ample modo quam de iure. 3 Lea 164. See Title Common, and Commoners.

No Distress for an Amercement in a Court Baron *sans* Prescription.

But in a Leet of Common Right.

How the Distringas, Return and View, to be by the Stat. of 4 & 5 Ann.

View of the Messuages, &c. And in such Case the Court may order a Special Writ of *Distringas*, by which the Sheriff shall be directed to have Six out of the first Twelve Jurors named in such Writ, or some greater Number of them at the Place in Question, some convenient Time before the Tryal, who shall have the Matters shewn by Two Persons to be named to the Writ, to be appointed by the Court: And the Sheriff who is to execute it, shall, by a Special Return upon the same, certify, That the View hath been had according to the Command of the said Writ.

For an Amercement in a Court Baron, the Lord cannot distress without a Prescription: But for a Fine, and for all Amercements in a Leet, a Distress is incident of Common Right. 11 Rep. 45. a, b.

By the Statute of 4 & 5 Ann. for the Amendment of the Law, it is enacted, That if the Court shall think it necessary, the Jurors shall have a

**Difcon**

# Discontinuance.

First Part 189.

Amendment, See Continuance.  
Jeofails.

There is a Discontinuance of the Possession of Land, and a Discontinuance of Process. A Discontinuance in Land, is where Tenant in Tail makes a Feoffment in Fee of his Land. Discontinuance of Process, is where it is put fine Dis. and dismiss'd the Court.

By an Act made 4 & 5 W. & M. it is enacted, That upon the Demise of any King or Queen, all Pleas to Informations in the Court of King's Bench shall stand and be good in Law, without calling the Defendant to plead again to the same, unless the Defendant desire so to do, and request the same of the Court,

In what Cases Discontinuances are amendable, and in what not, See in Title Amendment.

Discontinuance of Process, is help'd at the Common Law by Appearance. *Show. Rep. 320.*

All Discontinuances and Miscontinuances whatsoever (as well before as after Verdict, *Cro. El. 489. Cro. Ja. 528. Cro. Car. 236.* and as well on the Part of the Plaintiff as on the Part of the Defendant, or other Negligence of the Parties, their Counsellors or Attorneys) are cured after a Verdict, *per Stat. of 32 H. 8. cap. 30. 3 Lev. 325, 40, 39. See 36 E. 3. cap. 15. Dany. 352.* But imperfect Verdicts are not help'd by this Stat. *2 Leon, 196. Cro. El. 133. 3 Lev. 55.*

No Discontinuance upon a Demise *le Roy.*  
4 & 5 W. & M. cap.

In what Cases amendable, and in what not.

Discontinuance of Process help'd by Appearance.

All Discontinuances and Miscontinuances, are cured after Verdict.

32 H. 8. cap. 30.  
36 E. 3. cap. 15.



## Discontinuance.

Where a Jury find but for Part, it is a Discontinuance.

Where the Court will give Leave to discontinue, and where not.

Where the Plea is but to Parr, it is a Discontinuance.

And a Demurrer to it, discontinues the Whole.

Parcel, pleads Not Guilty : And as to the breaking of the Close, (but says nothing of cutting down and carrying away the Timber) pleads a Title : So that in the Quoad, the Trespass as to the Trees was totally omitted : And then upon a Demurrer, the Demurrer being joined, the Whole was discontinued ; but by Consent to try the Matter in Law, the Roll was amended. 4 Rep. 62. 4.

Trespass for Two Things, the Jury find a Verdict for one, and nothing for the other, it is a Discontinuance.

The Court will not give the Plaintiff Leave to discontinue upon a Bond, where he may have Covenant. 2 Lr. 118.

In Trespass *quare Clausum fregit* & 300 Oaks, &c. then growing, did cut down, and 2 Cart Loads of Wood did take and carry away : The Defendant to all, *preter* the breaking of the Close, and cutting down of 100 Oaks,

Discontinuance of Proceedings. In what Cases Discontinuances are allowable, and in what not. 2e in the Amendment.

Discontinuation of Proceedings. In what Cases Discontinuances are allowable, and in what not. 2e in the Amendment.

Discon

# Discontinuance of Estates,

**Discontinuance of Estates.** Where a Tenant in Tail, or Fee, is seized in the right of his Wife, &c. by Feoffment, Gift in Tail or Lease, not warranted by 32 H. 8. by Fine or Libery, then such Aliens are called Discontinuances: In which Cases, the Wife after her Husband's Death, nor Issue in Tail after the Death of the Tenant in Tail, nor those in Remainder or Reversion, cannot enter, but are every of them to his Action.

A Grant without Livery, makes Discontinuance. 1 Rep. 44. b.

A Grant in Fee without Warranty makes no Discontinuance. *Ibid.*

The King is Tenant in Tail, and dies, the Grant is void; for a Grant without Livery makes no Discontinuance.

It shall bind but only during the Grantor's Life. And the same Law is in case of such Grant in Fee: For the Grant in Fee makes no Discontinuance without Warranty. 1 R. 44. b.

A Grant without Livery, makes no Discontinuance.

A Grant in Fee *sans* Warranty, makes no Discontinuance.

Neither doth the King's Grant in Fee, without Warranty.

**Divorce, See Marriage.**

**Disceit.**

# De Venditione Disceit

*Disceit, Quid.*

**D**isceit, is where a Disceit is done by one Man to another, in not performing of his Bargain, or Promise; or selling of good Commodities, or putting of any Cheat on the Buyer.

In an Action of Disceit, the Seller need not to be proved at the Tryal, because it shall be presumed, that the Party knew whether the Wares were good or bad. Trin. 34 Ca. 2. Ro. 802. B.

If I have any Commodity (or Victuals, &c.) that is corrupt, and knowing of it to be so, sell it for good, and affirm it to be so, an Action lies for this Disceit: though it be corrupted, if I know it not, though I affirm to be good, yet no Action lies, unless I warrant it. So now Difference between an Affirmation and a Warranty. Cro. 469. New. Dyer 25. in Margins.

The Plaintiff declares upon Emitter of an Hogshead of Ale, &c. Cons. inde ad tunc & ibidem, he warranted it to be good, whereas it was not. It was moved in Arrest of Judgment, That it should have been Warranted.

zando Vendidit; and not as it is here laid, that in Consideration inde Warrantizavit, which shall be intended to be some Time after the Sale, whereas it ought to be Part of the Contract. \*Curia, it shall be intended, that the Warranty was at the Time of the Sale, especially being after a Vendit.

It is a general Rule, That the Warranty must be made at the Time of the Sale. Cro. Jac. 196, 197. Bridgm. 127.

Disceit



*Falso & Fraudulenter vendidit*, after a Verdict, imports, That it was *Scienter*, and supplies the Want thereof. *Stiles 210. 3 Keb. 807 1 Syd. 146.*

A Man possess'd of Goods sells them as his own, which were not so. An Action lies for this Disceit without Warranty, or alledging that he knew them not to be his. *Show. Rep. 68.*

If a Man sells me an Horse without warranting of him to be sound; if he be distemper'd in his Body, yet no Action lies against him. *Bridgm. 127.*

A Vintner sells Wines as sound, and not corrupt (knowing them to be corrupt) without any express Warranty, an Action of Disceit lies against him; for this is a Warranty in Law. *Retw. 91. 9 H. 6. 530b.*

Where the Plaintiff declares, that *providere & incurre absque Consideratione ineptitudinis Loci*, he drove his Horses over the Plaintiff, though not *Scienter*, that they were unruly; yet an Action lies. *2 Lev. 172.*

The Plaintiff declared, That the Defendant bargained with the Plaintiff to sell him a Mare, and *adunc & alieno Solens* the Mare to be lame, *quam pred' sanam & absque aliqua infirmitate* *Warrantizandi*, *quam pred' eadem quer' falso & fraudulenter, adunc & ibidem Vendidit & sic ipsum fallaciter decepit*; and after Verdict, moved to be naught: Because not said, *Warrantizandi*. And the Sale may be at one Time, and the Warranty at another, and Judgment stayed. *See Cro. Jac. 630, 631.*

If my Servant sells an unsound Horse, or other Goods, in a Fair to a Man, no Action lies against the Master for it, for he did not command the Servant to sell it to any particular Person. But if the Servant, by his Master's Order, sells an unsound Horse to any particular Person, there an Action lies against the Master. *Dano. 184.*

If a Vintner's Servant sells corrupt Wine, the Action lies against the Master, though he did not order the Servant to sell it to any particular Person.

Where *Falso & Fraudulenter* supplies *Scienter*.

A diseased Horse is sold without Warranty, no Action lies.

Where it lies upon a Warranty in Law.

Case lies for *Imprudens*, driving of his Horses over the Plaintiff, without the Word *Scienter*.

Declaration naught, without *Warrantizando Vendidit*.

Where the Action lies against the Master, and where not.

Where it lies against the Master.

Disceit.



# Discent.

## Discent, Vide First Part 201. Pleas, and Pleadings.

Of Discents :

Lineal.

Collateral.

**Lineal.** Discent, is either Lineal or Collateral. Lineal, is where a Discent is conveyed in the same Line of the whole Blood, as Grandfather, Father, Son, Son's Son, and so downward. Collateral, is from another Branch from the whole Blood, as Grandfather's Brother, Father's Brother, and so downward.

Where the Lands shall descend to the Heirs of the Part of the Father. And if no Heirs, escheat.

So likewise in case of a Discent on the Part of the Mother.

In Case of a Purchase, it is otherwise.

Heirs of the Father's Part, if any, shall have it : But if none, then the Heirs of the Mother's Part. *Ibid.* So is the Case of *Cleer & Brook, 2 Plow. 446, &c.*

Where the Heir shall take a Reversion in Fee upon an Estate Tail, as a Reversion, and not as a Remainder : So that he shall take by Discent, and not by Purchase.

not as a Remainder : So that the right Heir shall take it as Heir by Discent, and not take it as a Remainder by Purchase.

**Collateral.** Discent, is either Lineal or Collateral. Lineal, is where a Discent is conveyed in the same Line of the whole Blood, as Grandfather, Father, Son, Son's Son, and so downward. Collateral, is from another Branch from the whole Blood, as Grandfather's Brother, Father's Brother, and so downward.

Where Lands descend to the Son from the Father ; and he enters and dies seized without Issue, this Land shall descend to the Heirs of the Part of the Father ; and if there be no Heirs of the Part of the Father, the Lands shall escheat : So likewise it is where Lands descend to the Heir of the Part of the Mother, *Co. Litt. 13.*

But in case of a Purchase, it is otherwise : For if the Son purchase Lands and die without Issue, the Heirs of the Father's Part, if any, shall have it : But if none, then the Heirs of the Mother's Part. *Ibid.* So is the Case of *Cleer & Brook, 2 Plow. 446, &c.*

Grandfather, Father and Son. The Grandfather levies a Fine to the Use of himself for Life, and after the Use of his Son in Tail ; and after to the Use of his right Heirs. The Grandfather has a Fee Expectant upon the Estate Tail as a Reversion.

That which originally vests in the Heir, and was not in the Ancestor, where the Heir has purchased by Purchase. 1 Rep. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

No Person can take as Heir by Purchase, who is not a right Heir ; nor by Discent, where the Estate never descended in the Ancestor. 2 Lev. 190. Discent as Heir, without saying how, is good upon a general Demurrer, being only Form. 1 Lev. 190.

Children shall inherit their Ancestors Estates in the right ascending Line, and are not inherited by them. Vaugh. 244.

In the Collateral Lines of Uncle and Nephew, the Uncle as well inherits the Nephew, as the Nephew the Uncle. Vaugh. 244.

In the Case of Aliens, nothing interrupts the common Course of Discent, but Defectus Nationis. Vaugh. 268.

If a Gift be made to a Man and the Heirs of his Body ; and he hath issue, a Son and a Daughter by one Venter, and a Son by another Venter : The Eldest Son enters and dies, the youngest Son shall inherit *per formam* ; for he claims as Heir of the body of the Donee, and not generally, as Heir of the Brother. And this is the Reason of the Rule, *Quod possessio Fratris in feodo simplici, facit Sororem esse heredem* : By this Rule, the Brother ought to be actual Possession of the Fee Simple, either by his own Act, or the actual Possession of another, as if it were leased for Years. The Possession of the Fee and Freehold in the Elder Brother ; and the Sister shall inherit as Heir to her Brother who was seized : But of a Reversion or Remainder Expectant upon an Estate for Years, or in Tail, there he who claims the Reversion as Heir, ought to make

How a Man may take by Discent, and how by Purchase.

Discent as Heir, without saying how.

How Children shall inherit their Ancestors in the Right Line.

How in the Collateral Line.

What interrupts the Course of Discent, in the Case of Aliens.

To a Man and the Heirs of his Body.

The Father dies, and

Who shall inherit *per formam Domi*.

as Heir of the Brother.

*Possessio Fratris.*

\* Note, *In feodo Simplici.*

Actual Possession.

Lessee vests the actual Possession, and the Sister shall inherit

How the Discent to be, in case of a Reversion or Remainder.

himself

himself Heir to him who made the Gift, or Lease of the Reversion, or Remainder descended upon him: Or if he purchase such Reversion or Remainder, he who claims as Heir, ought to make himself Heir to the first Purchaser. 3 Rep. 411

42.  
How a Man may take by Discent and how by Where the Heir shall be in by Discent, upon the Devise of a Remainder. Discent is Heir, without saying how.

The Difference between Conveyance in Fee Simple, and of Estate Tail, to a Man's right Heirs.

How in the Collateral Line? What interprets the Courts of Discent, in the Case of Aliens.

To a Man and the Heirs of his Body.

The Father dies, and

Who shall inherit per

as Heir of the Bro?

Possibility

Note in Feoffment.

Actual Possession.

The Possession of the Lessee vests the actual and the other shall in-

How the Discent to be in case of a Reversion or Remainder.

himself

How a Person can take as Heir by Discent. A Man seized ex parte Materna, for Years, and afterwards to his Heir ex parte Materna, the Heir shall inherit by Discent, and not by Purchase. 3 Rep. 127.

Where Lands are conveyed in Fee to a Man's right Heirs, by the Name of Heirs, be it by Use or Devise, yet the Heir is in by Discent: But otherwise it is, if Lands be so conveyed in Tail. In the Collateral Line, the Uncle as well as the Nephew, as the Nephew, as the Uncle, 3 Rep. 244.

In the Case of Aliens, nothing in the common Courts of Discent, but in the National Courts, 3 Rep. 244.

If a Gift be made to a Man and the Heirs of his Body; and he hath a Son and a Daughter by one wife, and a Son by another Wife, the Elder Son enters and dies, the younger Son shall inherit per stirpem, for he claims as Heir of his Father, and not generally, as Heir of the Bone, and this is the Reason of the Rule. Good possession Franchises in Feoffment, but not in Feoffment: This Rule the Brother ought to be actual Possession of the Fee Simple, or by his own Act, or the actual Possession of another, as it were, for Years. The Possession of the Brother and Sister in the Elder Brother who was as Heir to her Brother who was seized: But of a Reversion or Reversionary upon an Estate for Years or in Tail, there he who claims as Heir ought to make

Will







# Disability

Disability, See **First Part.**  
**Disability, See 2nd Part.**

Disability, what.

**D**isability, is where a Person is disabled of any Act or Thing done by himself or his Ancestor, or for or by any other Cause, disabled of made incapable to inherit, or to take Benefit or Advantage of a Thing, which otherwise he might have done.

Some Disabilities are by the Common Law, and some by Statute. The Common Law, Infancy, Idiotism, Non Compos, and Feme Coverts.

Disabilities at the Common Law, what.

**Non Compos Memory, Coverture, &c.** See Rep. 77. 2.

As to Infancy.

Where the Action lies against the Infant.

As to Idiotism, See **Chapter, Feme Coverts.**

Non Compos, or Feme Covert, cannot make any Conveyance, except it be by Fine or Recovery, it is voidable. See Rep. 77. 2.

So of Bishops, Parsons, Vicars, Prebendaries, &c.

So a Bishop without Dean, Chapter, Parson or Vicar, without the Patron and Ordinary; Probationer, without the Bishop, Dean and Chapter, &c. have Power to dispose of their own Possessions, during their Incumbency, but not to Prejudice their Successors.

Masters and Fellows of Colleges, Archbishops and Bishops, disabled.

13 Eliz. cap.

1 Jac. 1. cap. 3.

Disabilities by Act of Parliament, as Masters and Fellows of Colleges, by the 13 Eliz. and now Archbishops and Bishops, by the 1 Jac. cap. 3. All which are disabled to do any Thing to the Prejudice of their Successors. 11 Rep. 77. 4.

**Doggets, See Judgments.**

Dem

# Demand,

First Part 203.

Demand, See

Acceptance.

Nomine penae.

& Rent.

Demand is a Term of Art; and

therefore if a Man makes a

Release to him to whom it is made.

There are also Demands for Rent, and other Matters.

If there be no Place expressed in

Deed where a Rent for Land, or

Nomine penae, or any other Thing

demandable shall be made, the Law

then direct, that the Demand shall be made upon the

most convenient Place on the Land; out of which the

or Nomine penae, or other Thing demandable, issues

out of. See *Hob. 208, 209.*

For that is the most

convenient Place to make such a Demand, because the Rent

Nomine penae, partakes of the Nature of the Land out of

which they Issue; yet the Parties, by

Agreement, may direct the De-

mand to be made elsewhere.

Where a Rent is made payable

at certain Place off from the Land,

it needs no demand of the Rent

off the Land for the Re-entry, as

in *Dyer 68. Pl. 24. Plow. Com. 71.*

But I think it advise-

able that there be a Demand made at the Place appointed for

Rent to be paid; and so is, 4 *Rep. 73. Burrough's Case;*

where it is resolved, That there must be a Demand made

at the Place appointed for the Payment of it; and the contrary

is in *Plow.* denied to be Law.

The Meaning of the Word.

Lit. 117. 22

Where a Demand for

Rent, or a Nomine penae,

must be.

For that is the most

convenient Place to make such a Demand, because the Rent

Nomine penae, partakes of the Nature of the Land out of

which they Issue; yet the Parties, by

Agreement, may direct the De-

mand to be made elsewhere.

Where a Rent is made payable

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Rent to be paid; and so is, 4 *Rep. 73. Burrough's Case;*

where it is resolved, That there must be a Demand made

at the Place appointed for the Payment of it; and the contrary

is in *Plow.* denied to be Law.

How, where, and when,  
a Demand of Rent must  
be made to avoid a Lease.

Grace, a little before Sun-set; and if the House be open, enter  
into it: And if it be not open, then at the Door of the House  
or most notorious Place of the Thing demised, say these  
Words, viz. *I do here demand (not, I come to demand) the*  
*Sum of, &c. for half a Year's Rent for this House, and other Things*

*I Plow. 70, 71.*

*herewith demised to A. B. due at such*  
*Day in such a Month last, and yet not*  
paid: And after such Demand made, the Party must continue  
upon the Place, till it is so dark that you cannot distinguish  
good Money from bad; and if no body comes to pay the Rent  
then the next Day, or some Day after, the Lessor must make  
actual Entry. And then he hath avoided the Lease, so that  
may bring his Ejectment, or an Action of Trespass. *1 Plow.*  
*172. b.* For the Manner of the Entry, see Title Entry.

Whether a Demand be  
necessary to entitle to a  
Distress.

a Demand is necessary to entitle the Party to a Distress.  
*Lutw. 123.* In *Hob. 208.* it is said by *Hobart*, That where  
Clause is That if the Rent be behind, being lawfully demand-  
ed, then he may Distrain; It is no more than the Law speaks  
and therefore the Distress implying a Demand and Distress  
one before another by Operation of Law, satisfies it. See  
*Hob. 207.*

A Lease for Years is not  
void, without a Demand of  
the Rent.

A Lease for Years, with Con-  
dition to be void for Non-payment  
Rent, is not void, unless the Rent  
demanded, and an Entry made.

A Demand must be made  
for a Penalty or Forfeiture.

No Advantage can be taken of  
penalties or Forfeitures, without a  
demand upon the Day prefixed.



# Declaration.

First Part 206.

Amendment.

Debet & Detinet.

Emprisonment.

Joofails.

Pleadings.

Declaration, See

Declaration, is a shewing in writing of the Complaint

of the Plaintiff or Demandant against the Defendant or Tenant, wherein he supposeth to have received Wrong; and this Declaration ought to be plain and certain, because it compelleth the Defendant or Tenant to make answer to it.

Declarations ought to have Two Things, viz. Certainty and Truth.

What Imperfections, Omissions,

and Defects in Declarations, are

help'd by the Statute for Amendments of

the Law, 4 & 5 Anne, unless particu-

larly and specially shewn for Cause upon a Demurrer.

Where a Writ is returnable in

Trinity Term, and Bail is filed the

same Term, and there is no De-

claration delivered till after the

Feast Day of Michaelmas Term;

if the Declaration be delivered

before *Crastino Animarum*, the Defen-

dant must plead to try it that Term,

if the Plaintiff will; and if it be after *Crastino Animarum*, the

Defendant must plead to enter. And in case of an *Habeas Cor-*

pus, and a Bail filed of Trinity Term, and a Declaration de-

A Declaration, what.

Declarations must have

Certainty.

What defects in Decla-

rations are help'd by the

Statute of 4 & 5 Anne.

What Imperfections, Omissions,

and Defects in Declarations, are

help'd by the Statute for Amendments of

the Law, 4 & 5 Anne, unless particu-

larly and specially shewn for Cause upon a Demurrer. See

Where a Writ is returnable in

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Feast Day of Michaelmas Term;

if the Declaration be delivered

before *Crastino Animarum*, the Defen-

dant must plead to try it that Term,

if the Plaintiff will; and if it be after *Crastino Animarum*, the

Defendant must plead to enter. And in case of an *Habeas Cor-*

pus, and a Bail filed of Trinity Term, and a Declaration de-

livered



**Essoign Day of Michaelmas Term.**

livered after the Essoign-day of Michaelmas Term, and before *Croftum Animarum*, the Court was not fully satisfied, whether the Defendant was compellable to plead to Tryal in Michaelmas Term as he is in the Case of a *Cepi Corpus*. But the Clerks were of Opinion, That he was nor; because it was the Plaintiff's own Laches in not declaring in Time. Also the Court said, That it was the same Case as to Declara-

*Mensem Pasche.*

tions delivered before *Mensem Pasche* in Easter Term. Mich. 8 W. B. R. See Title Empar lance.

How far the Deed to be set forth in a Declaration in Covenant.

In Covenant, there needs no more of the Deed to be mentioned in the Declaration, than only so far as in the Covenant where the Breach is to be

Nor in Slander, how far the Inducement to be.

assigned, and then must conclude, *Prout per Indenturam*, or *Articulos*, &c. *hic in Curia prolatus inter alia plenius apparet*. Nor in Slander,

Preamble than is necessary, except where a Special Colloquium

is requisite. The like is to be observed in Actions upon general Statutes

How far in an Action on a general Statute.

for there to say, That the Defendant

committed such an Act *contra formam Statuti, in hujusmodi edit. & provis.* is better than to recite the whole Act: (But particular Statutes must be recited at large, and an examined Copy proved at the Tryal.)

Particular Statutes, how to be.

Where Issue is joined, it is not advisable for the Plaintiff to file his Declaration, but where Judgment is given in the Cause. For the Plaintiff

In what Cases the not filing of a Bill is Error, and in what not.

upon Demurrer, or by Default or Confession, the Judgment is erroneous for want of a Declaration filed. For before it is filed, it is not upon Record, and so there is no Declaration to warrant the Judgment; but after a Verdict, it is no Error

being aided by the Statute of *Jeofails*. A Declaration with *Middlesex* in the Margent, and *London* in the Body.

A Declaration with *Middlesex* in the Margent, and *London* in the Body of the Declaration, is naught upon Demurrer, but good after a Verdict. *W. & M. B. R.*

How the Memorandum is to be, to avoid Error.

A Declaration of Michaelmas Term, and an Empar lance to Hilary and then the Issue made up, with

*Memorandum*

*Memorandum, Quod alias scil. Termino Sci. Michaelis ult. preter-*  
*it. &c.* And the Cause of Action is laid to be 10 Novembris,  
 which is in Michaelmas-Term, this is naught. But if the Me-  
 morandum had been thus, viz. *Memorandum quod die Martis prox. post Osta-*  
*Sci. Martini* (which is a Day in  
 the Term, after the Day whereupon  
 the Action is laid) *Termino Sci. Michaelis ultimo preterito coram*  
*Domino Rege, &c.* then it had been well. 5 W. & M. See  
 1 Lev. Rep. 147.

How to be in the Memo-  
 randum, when the Action is  
 laid within the Term.

After Error in the Exchequer  
 Chamber, the Court will not in any  
 subsequent Term amend the Memo-  
 randum in the Entry of a Judgment.  
 At the same Term that the Judgment is of, they will, upon  
 Motion, amend it. Because the Term is taken to be but as one  
 day in Law, and the Court have all the Entries before them of the  
 present Term to alter and amend as they shall think fit; but they will  
 not do it of any Subsequent Term.

The Court will not a-  
 mend a Memorandum after  
 Error brought.

A Memorandum was thus, *Memorandum, quod alias scil. Termino Sci.*  
*Hilari, and upon Oyer of the Con-*  
*dition of the Bond, the Action did not*  
*accrue until the 8th of February;* so  
 at the general Memorandum related  
 the first Day of Hilary Term, which was before the Action  
 accrued; and after Judgment, Error was brought, and the  
 Plaintiff filed his Bill as of the 10th Day of February: And it  
 was moved to take this Bill off from the File. But there being  
 another Bill on the File, nor no Rule against the filing of it;  
 and for that upon Examination it appeared, that the Declaration  
 was not delivered to the Defendant's Attorney until after the Cause  
 of Action accrued: Therefore they would not order it to be taken off  
 from the File, but let it stand. 10 W. B. R.

Where the Memorandum  
 was before the Action ac-  
 crued, and the Bill filed af-  
 ter, and the Courts would  
 not suffer it to be taken off  
 from the File.

But where in another Case this  
 Error was assigned for Error in the  
 Exchequer Chamber, and the Bill certified there, the Court  
 would not amend the Memorandum. 6 W. B. R.  
 False Latin shall not hurt a De-  
 claration. 1 Lev. 885. b.  
 Declaration in Banco Regis,  
 shall not refer to the First Day of the  
 Term, but to the Day of Filing of  
 the Bill. 2 Lev. 13. 176.

Denied in another Case,

False Latin shall not  
 hurt a Declaration.

Where a Declaration re-  
 fers to.

Trover and Trespass lie not in one Declaration.

If there be no Bill filed, it is not Error after a Verdict; but if there be an ill Bill, it is Error.

For the Statutes of *Jeofails* do not extend to erroneous Bills but only where there are no Bills filed.

Where and how a Declaration may be amended.

Where the Declaration shall be made good by the Bar, and the Bar by the Replication.

Replication by the Rejoinder. But when the Declaration wants Substance, no Bar can make it good; so of a Bar, Replication, &c. 8 Rep. 120. b.

The Plaintiff cannot amend his Declaration without a Rule.

Copy to the Defendant's Attorney as he hath amended it; the Defendant's Attorney is not bound to receive it, except the Court, or a Judge, do order him to receive it. For it may be in Substance a new Declaration, and may require a different Plea, which the Court must judge of, and not the Attornies.

The order for the Defendant paying of 4d. a Sheet for all Copies of Declarations.

*Michaelmas* Term, upon the Appearance of any Attorney, or other Person, for any Defendant in this Court, the Plaintiff's Attorney shall not be bound to deliver to the Defendant's Attorney the Original Declaration; but instead thereof, shall deliver a true Copy of such Declaration: And that upon the Delivery or Tender thereof, the Defendant's Attorney, or other Person acting for him, shall pay unto the Plaintiff's Attorney, or other Person acting for him, for the Copy of such Declaration, after the Rate of 4d. per Sheet Copywise, together with the Stamp or King's Duty thereon, which

Together with Stamps.

Trover and Trespass will not lie in one Declaration. 2 Lev. 101.

If there be no Bill filed, this is no Error after a Verdict; but if there be a Bill filed, and that proved to be erroneous, that erroneous Bill will reverse the Judgment after a Verdict.

Where and how a Declaration may be amended, and where not. Vide Title Amendment.

Sometimes the Declaration shall be made good by the Bar, as when it wants Time, Place, or other Circumstances; sometimes the Bar by the Replication, and sometimes the

If the Plaintiff's Attorney desire a Declaration to the Defendant's Attorney, and afterwards amends his Declaration, and tenders another Copy

By an Order made by all the Judges, under their Hands, in Term Vacation, 12 *Willielmi Tertii* Regis.

It is ordered as followeth, viz. That from and after the First Day of



And he in lieu of the Copy of such Declaration usually made by the Defendant's Attorney. And that upon pleading by General Issue or General Demurrer to any Declaration, before any Special Demurrer or Special Plea pleaded, the Plaintiff's Attorney shall and may deliver unto the Defendant's Attorney, a Copy of such Issue or Demurrer, who shall pay for the same

at the Rate of 4 d. per Sheet Copy-wise, and also for the Stamps thereon.

And if any Attorney, or other person, shall refuse to pay for the Copy so as aforesaid tendred, the Plaintiff's Attorney shall and may lay the said Copy of such Declaration in the Office, with the Clerk who keeps the Files of Declarations of this Court, who shall receive the same without any Fee or Reward. And thereupon the Plaintiff's Attorney giving Rules

plead, may for want of a Plea sign Judgment; and before any Plea shall be received, the Defendant's Attorney shall pay for the Copy of such Declaration, and the Stamps as aforesaid. And in case the Defendant's Attorney shall not pay for the Copy of any General Issue or Demurrer so as aforesaid joined, and also for the Stamps, the Plaintiff's Attorney may sign Judgment, as if no Plea or Demurrer had been given or pleaded.

Where an Amendment is not so near as to deface the Record, the Court will give Leave to amend the Record after Entry upon Payment of Costs.

The Court will not suffer a Declaration to be filed by the By, against Defendant, who files Common Bail Ejectment; Because he is not in Court, nor comes in by the Process of the Court; but is made Defendant by Rule of Court to defend his Possession only.

In all Cases where an Interest or Estate commences upon Condition, be the Condition or Act to be performed by the Plaintiff, Defendant, or any other, and be it in the Affirmative or Negative, there the Plaintiff ought to

Where a general Plea or Demurrer, the Plaintiff's Attorney shall deliver the Defendant's Attorney a Copy of, the Issue: For which, he shall pay him 4 d. per Sheet, and also for the Stamps.

On Refusal to pay for it; then to leave it in the Office.

Where it shall be paid for.

Where the Court will give Leave to amend a Record.

No Declaration by the By must be filed against a Defendant in Ejectment.

Where an Interest or Estate commences upon Condition, the Plaintiff in his Declaration must shew a Performance.



shew it in his Declaration, and aver the Performance of it; for the Interest or Estate commences in him upon the Performance of the Condition, and not before.

But *aliter* where they pass presently, and vests in the

Grantee, and is to be defeated by Matter, *ex post facto*, or Condition Subsequent; be the Condition or Act to be performed in the Affirmative or Negative, or to be performed by the Defendant, or any other, there the Plaintiff may Count generally, without shewing of any Performance: And this shall be pleaded by him who is to take Advantage of it. 7 Rep. 10. a.

Annuity granted when promoted.

And until promoted,

he be promoted, there he shall have a Writ of Annuity, and need not to say he is not yet promoted.

How to be set forth in the Declaration.

The Declaration must be in the same County where the Original is sued out, and Bail put in; otherwise the Bail are discharged.

Where the Plaintiff declares upon one Date, he cannot say that it was *primo deliberat* at another Day.

it was adjudged, That where the Plaintiff declares upon one Date, he cannot afterwards reply that it was *primo deliberat* at another Day. Because that is a Departure for *prima facie* every Deed is supposed to be made the Day it bears Date. But where the Date is mistaken, the Party may declare, or in his first Plea plead, That the Deed bearing Date such a Day

How it may be,

If I grant to a Man an Annuity of 10 l. per Annum, when he shall be promoted to a Benefice; in his Demand of it, he must shew that he is promoted.

But if it be granted until he be promoted, he shall have a Writ of Annuity, and need not to say he is not yet promoted. Because the Annuity proceeds, and the Promotion is subsequent. 7 Rep. 10. b.

An Original is sued out in London and Bail put in, and the Declaration is in another County. This is good against the Party, but the Bail are discharged, and not liable to a *Sci fac*. 3 Leo. 233, 245.

But it is otherwise where the Action is brought by Bill, Debt upon Bond, and declares That 20 Maii, 30 Car. 2. the Defendant, by his Bond dated 10 October *sed primo deliberat* 20 Maii, became bound, &c. And upon a Demurre

it was adjudged, That where the Plaintiff declares upon one Date, he cannot afterwards reply that it was *primo deliberat* at another Day. Because that is a Departure for *prima facie* every Deed is supposed to be made the Day it bears Date. But where the Date is mistaken, the Party may declare, or in his first Plea plead, That the Deed bearing Date such a Day was *primo deliberat* such a Day, and that the Party then became bound. 3 Leo. 348.

The Plaintiff brought an Action, and his Declaration was naught; he afterwards brings a new Action, and amends his Declaration. The Defendant pleads the Judgment in the former Action, and held an ill Plea. 1 Mod. 207.

Antiently all Deeds pleaded were actually brought into Court, and left in the Hands of the Secondary: To the Intent, that if they were found to be forged, or to be void Deeds, then to be damned.

Where Trespass is brought in the County-Court, and removed by Record into the King's Bench, and the Damages are under 40 s. so that the Court of King's Bench cannot properly hold Plea of it; you must, to entitle the Court to proceed therein, say thus: *Rem. ff. T. W. Bar. nuper in Curia Com. A. B. Ar. Vic. Com. predicti teni apud M. in Com. predicti die Jovis 10 die Maij, Anno Domini 1705. Querebatur versus C. D. de placito transgr. que quidam loquela ad Petitionem predicti T. W. Bar. habita est coram Domina Regina apud Westmonasterium adhunc diem scil. a die Sancte Trinitat. in tres Septimanas per breve Domini Regni nunc de Recordare facias loquelam. Et modo adhunc diem venit tam predicti T. W. Bar. per J. A. Attornatum suum quam predicti C. D. per E. F. Attornatum suum. Et super hoc idem T. W. Bar. per Attornatum suum predicti queritur quod, &c. and so on.* And if the Defendant in the County-Court had pleaded liberum Tenementum, and the Plaintiff had removed the Plaint without shewing of any Cause at the end of the Writ; and that the Plaintiff only, and not the Plea, is returned; (which ought to be, because the Superior Court cannot hold Plea under 40 s.) then the Plaintiff must say, *Que quidam loquela ad Petitionem predicti (Quer.) in quod predi (Def.) in placito illo in Curia Com. predicti clama- bat liberum Tenementum habita est hic.* Hill. 36. & 37: Car. 2. Rotul. 1137. in Com. Banco. Vide

Plaintiff had an ill Declaration, and afterwards amends it; Defendant pleads the Judgment in the former Action, and held to be ill.

All Deeds brought into Court must be left with the Secondary.

Where Trespass is brought in the County-Court, and removed when it is under 40 s. How to declare in this Court.

See the next Case following.

The Declaration.

Rotul. 1137. in Com. Banco. Vide Car. 2. cap. Rastal 370. 22 Car. 2. cap. 2. Brownl. 187.

22 Car. 2. cap. 2.

Trespass,

See the next Case before  
forel in na ben himself

The Defendant demurred, because the Court had not Jurisdiction of the Cause where Damages are under 40 s. It was said for the Plaintiff, that he had removed this Cause by *Recordare*, because the Defendant had pleaded *liberum Tenementum*; and so it is not tryable in the County-Court. *Curia*, it shall be intended that the Action was originally brought in this Court, because the Declaration is *Vi & Armis*. And where an Action of Trespass is removed out of the County-Court, the Declaration ought to be without *Vi & Armis*. It was also held, That a Declaration, *Vi & Armis*, in Trespass, may be laid under 40 s. Damages, because the King is to have a Fine, and a *Capias*, for it. *Lambert and Thurston. Hill. 1 W. & M. C. B.*

#### Declarations for Words.

It must be *Malitiose dixit*.

themselves are Malitious and Slanderous. *Tel. 113. Stiles R. 392.* But the safe and sure Way is to say it, *Falso & Malitiose dixit, &c.*

How Words must be laid.

*a quorum tenor sequitur in bec Verba.* Cro. El. 857. Nor *ad tenorem & effectum sequentem.* 3 Mod. 72.

Where *Vi & Armis* shall not be

Declaration begins in Trespass, and the Action in Case yet good.

*transg.* for that will serve indifferently for Trespass or Case. Cro. Car. 325,

*Quod cum*, and *per quod*, in a Declaration.

*ticatus sepium Clausi predicti prostravit & sic prostrat* for such a time *custodiret, per quod* the Cattle depasturing in the Common, came into his Close and eat his Grass, *ad dampnum, &c.*

Trespass, *quare Clausum fregit*, was removed by *Recordare*, where the Plaintiff counted *ad dampnum* 39 s.

§ 02 Declarations for Words. See *Danv. Abr.* from Fol. 266. to 270.

In a Declaration for Words, it was not laid, *Quod Malitiose dixit, &c.* and yet held good, if the Words

The Words must be laid expressly and positively, not with an *hec Verba vel Consimilia*. Cro. El. 645. Nor with

A Declaration for Negligence, or a Non-Fezance, shall never be laid with a *Vi & Armis*. Co. 9. R. 50. b.

If a Declaration begins, *Queritur de placito transg. pro eo quod, &c.* yet it may be a Declaration in Case, notwithstanding that it is said, *De placito transg.*

The Plaintiff's declares, *Quod cum* he was seized of a Close adjoining to a Common; the Defendant, *decem per*



This is good. Notwithstanding the  
Trespass is laid to be in the Plaintiff's  
own Soil; for it beginning *Quod cum*,

Where it is Case, and  
where Trespass.

and concluding *per quod*, it appears to be an Action upon  
the Case, and the Cause Cause of the Damages may be  
laid to be *Vi & Armis*, or without it. *See 84.*

Why called Donative.  
them, and that make a great number of his words to and  
Donative to have him appointed and instructed, and to be  
induced by the first Donative: from the factum, though it  
be a man, yet to his having conferred this upon the  
Clerk, which is called a Donative. *See Yelv. 60. Cro. El. 63.*

How a Donative Donative.  
must be granted, and when  
the Grant is void.  
in, as if granted expressly for life, but for a term of years, or  
only be granted for life, not for a term of years, or a Will, &c.  
But if the true Person of a Donative  
five hundred pounds, present to the Clerk  
of the Diocese, and under the  
million and institution respectively, he  
always preferable. *See Yelv. 60. Cro. El. 63.*

Donative.  
So it is in Case of the  
King.  
But if a stranger pre-  
sents, it is void.  
the Donative, who is preferred, and  
inducted; this shall not entitle the  
Clerk to a Donative, or in any way.

Who are capable of Do-  
natives, and why.  
must be either a Parsonage, Vicarage, or other Ecclesiastical  
Promotion or Dignity within a County.  
cap. 4. Now, he must take the Oath  
and make the Subscription according to the said Statute.  
*See Clergy-men's Law 13.*



# Donative.

Why called Donatives.

**D**onatives, are so called, because the Patron, in Conferring of them, doth not make a Presentment of his Clerk to any Ordinary to have him admitted and instituted, and to be inducted by the Arch-Deacon: But the Patron, though a Lay-man, yet by his writing confers this upon his Clerk, which is called a Collation. *Clergy-man's Law 120. See Yelv. 60. Cro. El. 653.*

How a Spiritual Benefice must be granted, and when the Grant is void.

in, as if granted expressly for Life: For a Spiritual Benefice can only be granted for Life, not for Years, or at Will. *Davi's Rep. 45, 46.*

If the true Patron once presents, it's always Presentable.

thereby hath made it always Presentable. *Cro. Jac. 63. Ca. Litt. 344. a.* Nay, this holds in the

So it is in Case of the King.

But if a Stranger presents, it's void.

Who are capable of Donatives, and why.

must be either a Parsonage, Vicarage, or other Ecclesiastical Promotion or Dignity within *14 Car. 2. cap. 4.* Note, he must take the Oaths,

and make the Subscriptions according to the said Statute. *See Clergy-man's Law 123.*

Prote,

**If a Benefice, with Cure, must in Two Months read the 39 Articles and Prayers Forenoon and Afternoon.**

144. s. 3. Cap. 63. Also, it is  
 for him to read the said Articles within Two Months after  
 he hath Possession; and also to read within the same Time the  
 Morning and Evening Prayers in his Church, and the Form of  
 giving his Assent or Consent thereunto,  
 otherwise his Benefice becomes void.  
 The Penalty.  
 Vide the Statute of 14 Car. 2. cap. 4.

### The Penalty.

*(Faint, illegible handwriting, likely bleed-through from the reverse side of the page.)*

But one comes to Britain Dam  
more Pleasant and fair the Club  
and the Owner drives them out  
put upon the land.

**Damage**

Amends for Tulpals cannot be tendered to a Bailie.

That he was possided of black and  
In Treips, the Defendant place

Plaintiff demands, doing damage, and is entitled to be paid for the same.

Government of the Territory did not for (Case 11  
denied, and shows for (Case 11  
of the Territory was not for

# Dammage Feazant.

**Abolishy.**  
**Distress.**  
**Dammage Feazant, See Justification.**  
**Tender.**  
**Plea and Pleading.**

Dammage Feazant, what.

**D**ammage Feazant, is when a Stranger's Cattle are in another Man's Ground, without the lawful Authority or Licence of the Owner of the Ground, and they do there feed, tread down, and spoil the Corn, Grass, &c. in which Case, the Owner of the Land may Distrain and Impound them.

Distress for Dammage Feazant, can be no where but upon the Land.

Dammage Feazant, but is put to his Action of Trespass; for the Cattle ought to be actually upon the Land Dammage Feazant at the Time of the Distress. 9 Rep. 22. a.

Amends for Trespass cannot be tendered to a Bailiff.

Neither can he demand Rent upon a Condition of Re-entry 5 R. 76.

How to plead Possession of a Term for Years.

Plaintiff demurs, because the Commencement of the Term was not set forth.

If one comes to distrain Dammage Feazant, and seize the Cattle, and the Owner drives them out, he cannot distrain them Dammage Feazant.

Where Cattle are distrained Dammage Feazant, Amends cannot be tendered to a Bailiff; for he cannot deliver the Distress when once taken, neither can he demand Rent upon a Condition of Re-entry 5 R. 76.

In Trespass, the Defendant pleads That he was possess'd of Black Acres *pro Termine diversorum Annorum, adum & adhuc ventur*; and that being possess'd, the Plaintiff's Cattle were doing Dammage, and he distrained them Dammage Feazant: The Plaintiff demurs, and shews for Cause, That the Defendant did not set forth the Commencement of the Term: For



regularly, where a Man in pleading makes a Title to a particular Estate, he must shew the particular Time of the Commencement of his Title, that the Plaintiff may reply to it:

But *per Curiam*, the Plea is good upon this Difference, *viz.* Where the Plaintiff brings an Action for Land, or doing of Trespas upon Land, he is supposed to be in Possession: But if he will justify by Vertue of any particular Estate, he must shew the Commencement of that Estate; and then such Pleading as here will not be good. But when the Matter is Collateral to the Title of the Land, and for any Thing which appears in the Declaration the Title may not come in Question, such a Justification as this will be good. In this Case, no Man can tell what the Plaintiff will reply: it is like the Case of Inducements to Actions, which do not require such Certainty as it is necessary in other Cases. *2 Mod. 70, 71.*

But in *Lutw. 1492.* it was adjudged, That the Pleading of *Possessio fuit* was not good, it being in Bar: And this was adjudged against the

Case above, of *2 Mod. 138.* *Idem quare.*

Which ought to be in Pleading of a particular Estate.

Where a Plaintiff brings Trespas, he is supposed to be in Possession.

But if he will justify by Vertue of any particular Estate, he must shew the Commencement

But where the Matter is Collateral to the Title of the Land, it is like the Case of an Inducement.

How Possession fuit must be pleaded.

Day.



regularly where a Man in pleading makes a Title to a par-  
ticular Estate, he must show the particular Title of the Com-  
plaint, and that the Plaintiff has a right to it.

But in Cases where the Plea is good upon  
the Defendant's Plea, it is not necessary to show the Particular  
Title of the Estate upon which the Defendant pleads.

Which ought to be in  
Pleading of a particular  
Estate.

# Day,

## See Day, and Day of the Date.

*Diebus alii sunt Naturales alii Artificiales. Dies Naturalis constat de 24 horis, & continet diem solarem. & noctem, & est spaciū in quo Sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies Artificialis sunt Solaris incipit in ortu Solis & desinit in occasu. Co. Lit. 135. a.*

What Feasts and Days  
the Court will take No-  
tice of.

And of the Kalendar.

Where the Day shall be  
taken inclusive, and where  
exclusive.

The Court will take notice of  
moveable and immoveable Feasts, and  
of the Kalendar: And if a Writ of  
Inquiry be executed after the Return,  
or upon a Sunday, the Court will so  
judicially take Notice of it, as to set  
it aside. 3 Anne, B. R.  
Where, and in what Cases, the  
Day shall be taken inclusive, and  
where exclusive. Lutw. 1591. 1594.  
See also the next Paragraph.

DAY

Day

# Day, and Day of the Date.

Day, and Day of the Date, See { Day, Delivery.

For this, See Title Day.

**T**HE Day of the Delivery of a Lease shall be taken to be inclusive, and the same Day is Parcel of the Demise: So it is if it be limited to Commence a Confectione: But if it be *Habend' a Die Confe. Fior* or a *Die Datus*, there the Day it self is excluded.

**I**f a Lease be dated the 20th of May, *Habend'* for Twenty Years from the Date, or from the Day of the Date, it shall begin the 21st of May: So if the Lease bears Date the 20th of May, to hold from the making thereof, or from henceforth, it shall begin the Day on which it was delivered. *Co. Lit. 46. b. 5 Rep. 1. 24.*

**I**n Trespais was laid the First of June: The Defendant pleads a Release until the 30th of May, (which was the Day of the Date,) *Absque hoc quod causa Actionis accrevit post confectionem scripti*: This is naught; because the *Diem Datus* excludes the Day of the Date: And the Traverse ought to be *Absque hoc*, that he was Guilty after the 29th of May, which is the Day next before the Day of the Date. *Paf. 5 W. & M. B. R.*

When Leases and Deeds to Commence.

In Trespais, a Release pleaded until the Date.

How the Traverse must be.

How to Count upon a Bond, where there is none.

Or an impossible Date.

Bond dated 1 *Januarii*, the Jury must find a Verdict for the Defendant; because this is not the Bond declared upon.

How to declare upon a Deed, with a *primo Deliberatum* such a Day.

came bound, and upon a Demurrer: *Curia*, Where the Plaintiff declares upon one Date, he cannot afterwards Reply, That

Where a Departure.

posed to be made the Day it bears date: But where the Date is mistaken, the Party may declare, That by Deed, bearing Date (such a Day), but *primo deliberat* such a Day the Party became bound. 3. *Lev.* 348. See Title Declaration.

Tho' the Party is estop'd to plead the Delivery before the Date, the Jury are not.

False Date to a Bond doth not hurt it.

Day and Year: And the it is found that the Bond

Tho' found to be delivered at another Day, yet the Plaintiff shall have Judgment.

The Date of the Deed is not of the Substance of the Deed, for it is good, tho' it have a false or impossible Date, or wants Date.

Where there is none, or an impossible Date, the Plaintiff may Count of any Date: But if the Count be upon a Bond, dated 1 *Decembris*, and upon *Non est Factum* pleaded, the Plaintiff gives in Evidence a

Debt upon a Bond, and declares, That the Defendant, 20 *May*, 34 *Ca.* 2. by his Bond dated 10 *Octobris*, *sed primo Deliberat* 20 *Maii*, be-

came bound, and upon a Demurrer: *Curia*, Where the Plaintiff declares upon one Date, he cannot afterwards Reply, That

it was *primo deliberat* at another

Day; because that is a Departure for *prima Facie*, every Deed is sup-

posed to be made the Day it bears date: But where the Date is mistaken, the Party may declare, That by Deed, bearing

Date (such a Day), but *primo deliberat* such a Day the Party became bound. 3. *Lev.* 348. See Title Declaration.

The Obligees cannot in pleading alledge the Delivery before the

Date; because he is estop'd to do it: But the Jurors are not estop'd

to do it, unless the Estoppel or Admittance be in the same Record where the Issue is joined. 2 *Rep.* 4.

If a Man brings Debt, and Counts that the Defendant, 4 *April*, 24 *Ca.* 2.

made a Bond bearing Date the same

Day and Year: And the Defendant pleads *Non est factum*; and

was delivered at another Day, either before or after the Day he has

counted upon: Yet the Plaintiff shall have Judgment; because the Date is

not material, and the Defendant cannot be twice charged. *Goddard*

*Case*, 2 *Rep.* 5. a.

The Date of the Deed is not of the Substance of the Deed, for

if it wants Date, or hath a false or impossible Date, it is a good Deed.

2 *Rep.* 5. a.

Duty, See First Part 218.

Dammage



# Dammages.

First Part 218.  
 Dammages, See } Costs.  
 Judgments.  
 Tryals.

Dammages, are a Recompence given by a Jury to the Plaintiff, for a Wrong done to him by the Defendant. Coi

Dammages, what.

How Dammages must be levied upon a *Nollanter*.

Where in Battery, Imprisonment, &c. against Three, who are found severally guilty, and Dammages severally; how the Judgment shall be.

And if several Dammages had been given, the Plaintiff could have but one of them, and he to make his Election *de Melioribus dampnis*. See *Stode's Case*. 3 Lev. 324. See Title Costs.

The Jury must not find more Dammages than is laid in the Declaration.

In an Action upon the Case, the Jury may find less Dammages than the Plaintiff lays in his Declaration, if they cannot find more than is laid in the Declaration: If they do, it is Error. For the Law presumes, That the Plaintiff doth best know how much he is damaged by the Defendant; and therefore, tho' it may be, the Plaintiff will pretend he is more damaged than in Truth (as is often done), yet it shall not be presumed, that the Plaintiff will say he is less damaged by the Defendant than he is: And therefore for the Jury to give more Dammages than the Plaintiff declares upon, would be unreasonable. But



the Plaintiff may release Part of his Dammages upon his entering up of his Judgment, as it was done in *Pilfold's Case*. 10 Rep. 115, 116. And that will set all right again.

*Dampna & Misa, quid.*

Where Double, Treble, &c. Damages and Costs.

How Damages and Costs to be recovered in real Actions.

Omission of Damages after Verdict, not supplied by Writ of Inquiry.

But where no Attaint lies, it may.

Dammages entire, and part, is not actionable.

ment can be given. 10 Rep. from 130. to 133.

The Jury are to assess the Damages upon a Judgment in Case upon a Demurrer.

on the Matter in Law; but the Damages are to be given upon Consideration of the Matter of Fact, which is proper only for the Jury to enquire of, and is left to them to assess upon a Writ of Inquiry of Damages.

Where an Action is brought for Two several Causes;

One is actionable, and the other not.

Dammages, as well for what is not actionable, as for what is. But if the Damages had been sever'd, then the Plaintiff might have remitted the Damages for that Part which was not actionable, and taken his Damages and Costs for that Part which was.

Of the Import of the Words, *Dampna & Misa*. 10 Rep. 16. b.

In what Cases double Damages, single Damages, treble Damages and Costs, shall be given. 10 Rep. 115. b. 118. a.

How and what Damages shall be recovered in real Actions. 10 Rep. from 116. to 118. a.

The Omission of finding of Damages in a Verdict, shall not be supplied by a Writ of Inquiry of Damages. 10 Rep. 118. b. 119. a.

So in all Cases where an Attaint lies; but where no Attaint lies, it may be supplied by a Writ of Inquiry. 10 Rep. 119. a.

Where Damages are entirely assessed, and Damages, ought not to be given for some Part; no Judgment can be given.

10 Rep. from 130. to 133.

Upon a Judgment given upon a Demurrer, upon an Action of the Case, the Court is not to assess the Damages, but the Judge is to do it. For the Court gives the Judgment upon the Matter in Law; but the Damages are to be given upon Consideration of the Matter of Fact, which is proper only for the Jury to enquire of, and is left to them to assess upon a Writ of Inquiry of Damages.

Where an Action is brought for Two several Causes of Action, one of which Causes is not actionable, and the other is, the whole Damages are given upon the Verdict: Here the whole Verdict is void; because the Jury have given Damages for what is not actionable, as for what is.

But if the Damages had been sever'd, then the Plaintiff might have remitted the Damages for that Part which was not actionable, and taken his Damages and Costs for that Part which was.

In Trover, the Jury find for the Plaintiff generally, and some Part of his Demand is Nonsense, and entire Damgages are given, and yet good ; for the Damgages shall be intended to be given for what is sensible ; but if the Jury find particularly for the Plaintiff for such Things, and some of them are Nonsensical, there it is naught. *Show. Rep. 144.*

Where a Debt is sued for, it appears certainly to the Court what it is : And if the Plaintiff recovers, the Jury do assess some small Damgages, commonly 12 d. And the Master taxeth the Costs, which is added to the 12 d. and called Damgages : But in Actions upon the Case, where Damgages are uncertain, there it is left to the Jury to enquire of, and to tax them ; But the Master afterwards taxeth the Costs *de Incremento ad Requiritionem* of the Plaintiff.

An inferior Court may encrease Damgages, *super Visum Vulneris*, as well as a superiour Court ; because the Law is the same in one Court, as it is in the other. *Ridge & Pitt. Pas. 2. Ca. 2. Rot. 561. B. R.*

He that makes Avowry, Conuince, or Justification for Rent or Damage Feazant, shall have his Costs and Damgages, by the Statute 21 H. 8. cap. 19. Sect. 3.

If a Judgment be given by *nichil* in an Action of Debt, brought in this Court, or the *Common Pleas* ; such Court, and not the Jury, will give Costs and Damgages : And it is used to be done in inferior Courts.

The Plaintiffs in real Actions do not allege any Damgages in their Counts, because they are to recover Damgages pending the Writ ; but in personal Actions they Count *ad Damnum*, because they recover Damgages for the Tort committed before the Writ brought. *Pilfold's Case, 10 H. 11. 4.* And where they recover Damgages, they recover no Costs.

Dammages given in Trover for a Nonsensical Demand, and good. Where, and where not.

Where Costs are taxed, and by whom, upon Judgments in Debt.

Where Costs, which is added to the 12 d. and called Damgages : But in Actions upon

And also in Actions upon the Case.

*de Incremento ad Requiritionem*

An inferior Court may encrease Damgages, *super Visum Vulneris*, as well as a superior Court.

Where the Avowant shall have his Costs and Damgages.

21 H. 8. ca. 19. Sect. 3.

The Court gives Costs upon a *Nil dicit* in Debt.

Costs and Damgages : And

When Damgages, and how, are recovered in real Actions.

And when in personal Actions.

Where are no Damgages, there are no Costs.

Where Costs are to be given, upon the Statute of 2 Ed. 6. for not setting out of Tythes, and what not.

are treble Damages;

Stat. 8 & 9 W. 1. r. 10.

No other Costs or Damages shall be given upon a Recovery, in an Action brought upon the Statute of 2 Ed. 6. for not setting forth of Tythes, than the Damages which are express'd in the Statute, which Jury, shall not exceed the Sum of Twenty Nobles, and then he shall have Judgment for his Costs, per Stat. 8 & 9 W. ca. 10.

Where Costs are to be given, upon the Statute of 2 Ed. 6. for not setting out of Tythes, and what not.

are treble Damages;

Stat. 8 & 9 W. 1. r. 10.

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Stat. 8 & 9 W. 1. r. 10.

are treble Damages;

Stat. 8 & 9 W. 1. r. 10.

And where they recover no Costs.

And where they recover no Costs.

# Deputies,

See First Part 230.

A Deputy, is he that occupieth in another Man's Right, whether it be an Office, or any other Thing; and his Forfeiture or Misdemeanor shall cause him, whose Deputy he is, to lose his Office or Thing.

What a Deputy is.

A Deputy Steward of a Court-Baron made a Deputy to take a Surrender to the Use of a Will, and held good upon a Case made at the Assizes in Norfolk, upon an Ejectment in the King's Bench, inter *Barker & Ket*, 12 Will. B. R.

Where a Deputy may make a Deputy.

Altho' a Mandamus lies not for a Deputy, it lies for him who has Power to make a Deputy, to have his Deputy admitted or restored; for otherwise he will be deprived of his Power to make a Deputy. 1 Lev. 306.

Mandamus lies for him who hath Power to make a Deputy:

But not for a Deputy.

A Deputy of an Office hath no Estate or Interest in the Office, but doth all Things in his Master's Name;

Deputy of an Office, what Estate he hath therein.

and his Master is answerable for him, 9 Rep. 48. b.



# Defeazance.

What a Defeazance is.

A Defeazance, is a Condition relating to a Deed, in such Manner as there are Conditions to Obligation, Recognizances, or Statutes; which being performed by the Obligor or Recognizor, the Act is disabl'd, and made void, as if it had never been done.

A Letter of Licence not to sue, is but a Defeazance: No Release.

Another Deed, *Show Rep.* 331, 334. But if the Parry sues before his Time is out, it will be a Forfeiture of his Debt, if it be so mentioned in the Letter of Licence.

Execution must not be sued out before the Time in the Defeazance is past.

Where the Action is founded upon a Deed, it cannot be defeazanced but by Deed.

Money may be pleaded to be paid at the Day, if paid before the Action. 4 & 5 Annæ.

An Estate sett'ed shall not be defeazanc'd afterwards.

A Letter of Licence not to sue, upon Pain of forfeiting the Debt, is no Release; it is but a Defeazance, and such an one as may be by another

Execution sued out before the Time in the Defeazance is past, shall be set aside; because the Court will not be a Stale for such Abuses. 5 W. & M. B. R.

A Defeazance for Payment of further Money upon a Bond, cannot be but by Deed: For that the Cause of Action being founded upon a Deed, no Defeazance can be thereof afterwards without Deed. 3 Lev. 234.

Money may be pleaded to be paid, tho' not paid at the Day mentioned in the Defeazance, per Stat. 4 & 5 Annæ. See Title Pleas, fol. 3.

An Estate first made, shall not be defeazanced by a Defeazance made afterwards. *Browning & Beeston.* 1 Plow. 133. 4.

# Default.

Default, See { First Part 230.  
Challenge.  
Jury.

**D**efault, is legally then for a Non-appearance in Court.

A Default, what.

Before a Verdict is taken by Default, the Cryer of the Court calls the Defendant Three Times, and then if the Party doth not appear, the Plaintiff's Council doth pray, That the Enquest may be taken by Default. He is called Three Times, to shew if he hath any Challenge to the Jurors; and if he doth not appear upon the Clerk's Calling, then the Capiatur per Default is endorsed on the Back of the Panel: And this is the only Meaning of the Default, viz. He makes a Default as to his Challenges only.

Where a Verdict is taken by Default, and what the Default is.

Where two are to recover a Personal Thing, the Default of one is the Default of the other: But when they are to discharge themselves of a Personalty, the Default of the one is not the Default of the other. 6 Rep. 25.

Where the Default of one is the Default of the other in Personal Things.

**De=**

# De Injuria sua propria.

De Injuria sua propria, See } First Part.  
Pleas.  
Justification.  
Issue.

De son Tort, what it is.

DE son Tort Demesne, or De Injuria sua propria absque tali Causa, are certain Words of Form used in Actions of Trespasse, or in Case for Words used by way of Replication to the Defendant's Plea.

De Injuria sua propria, omitting absque tali Causa, is naught.

Where it is naught.

tiel Cause, is naught. 1

So again.

Double Matter must not be put in Issue upon it.

When De Injuria sua propria is to be replied generally.

Where the Plaintiff ought to answer particularly; and not to reply generally.

De Injuria sua propria, without the Words absque tali Causa, is naught. 5 W. & M. B. R. Lutw 1384.

Where a Plea in Bar contains a Title, a Replication de son Tort sa

So also where Customs, &c. are in the Plea, it is Multifarious. 3 Lev. 49.

Upon de son Tort, there cannot be Variety of Matter put in Issue, a Matter of Record, and Matter of Fact. 3 Lev. 65.

The General, de Injuria sua propria, is properly where the Defendant's Plea consists meerly of Matter of Excuse, and no Matter of Interest. 8 Rep. 67. 4.

When by the Defendant's Plea, any Authority or Power is derived from the Plaintiff; there, altho' no Interest be claimed, the Plaintiff ought to answer this, and not to say generally, De Injuria sua propria, Absque

*Absque tali causa*, refers in a Replication to the whole Plea, and not to the Commandment, where the Defendant justifies as Servant. 8 Rep. 67. a.

Where the Defendant justifies by Vertue of a *Capias* to the Sheriff, and a Warrant upon it *De son Tort* generally, is no good Replication; for then the Matter of Record would be Part of the Cause, (for all makes but one Cause) and the Replication ought to be *De son Tort*, and traverse the Warrant, which is Matter of Fact: But such Replication is good, where the Warrant comes out of a Court, which is not a Court of Record, as a County Court, &c. 8 Rep. 67.

When the Defendant *in jure proprio*, or as a Servant to another, claims any Interest in a Common, or to a Rent-Charge issuing out of Land, or to a Way; there *De son Tort* generally, is not good: But if the Defendant justifies as Servant, there in some of the said Cases it is good with a Traverse of the Commandment, it being material; for the general Replication *De son Tort*, is properly when the Defendant's Plea consists merely of Matter of Excuse, and no Matter of Interest. 8 Rep. 67. a.

There ought to be a Conclusion to the Country in a Replication of *De son Tort*; because the Replication in this Case ought to make an Issue of it self. 3 Lev. 65.

In an Action for these Words, *Thou hast forged a Bond*, the Defendant justifies the Forgery, and the Plaintiff replies, *De Injuria sua propria*, &c. This is a good Replication: For tho' a special Forgery is alledged, yet it need not to be specially traversed. 8 Rep. 607.

Justification as Servant, per Mandatum, for Right of Common.

Where it is not good without a Traverse.

Where it is not good without a Traverse.

And where good with

Where it is good, with or without a Traverse.

How it ought to conclude.

Where it is a good Replication in an Action for Words.

Debt.



# Debt.

First Part 231.

Corporation.

Assignee.

Debt, Sec

Debet & Detinet.

Judgment.

Rent.

Venue.

Debt, where it lies.

**D**eBT is a Writ, and lieth to recover any Sum of Money is due, for Money lent, or for Contract, Obligation, or other Specialty, to be paid at a certain Time; and the same not being paid accordingly, the Plaintiff shall have this Action for the Recovery of it.

What Alterations in Actions of Debt, are made by the Statute of 4 & 5 Annæ. cap.

Debt lies not for Rent upon a Lease for Life; what Remedy for it.

Debt lies in this Court upon an erroneous Judgment in *Com. Banco*.

Defendant may plead *Nul tiel Record*.

What Alterations have been made by the Statute of 4 & 5 Annæ, in Actions of Debt upon Bills, Bonds and Judgments, and the Proceedings thereupon. See Title Declarations, Pleas, and Demurrers.

Debt lies not for Rent upon a Lease for Life; but the Remedy is by Assize if the Plaintiff hath Seisin, or else by Distress. 3 Rep. 65.

If there be an erroneous Judgment given for the Plaintiff in a Personal Action in the *Common-Pleas*, and thereupon he brings an Action of Debt against the Defendant upon that erroneous Judgment in this Court; if the Record be removed out of the *Common-Pleas* into this Court, the Defendant may plead *Nul tiel Record*, there being no Record in the *Common-Pleas* to warrant the Action: But if a Writ of Error be brought

brought upon a Judgment in this Court, returnable in the *Exchequer-Chamber*, which Judgment is erroneous, an Action of Debt upon the Judgment well lies, until the first Judgment is revers'd.

Debt lies upon a Judgment in B.R. after Error brought, returnable in the *Exchequer-Chamber*: For the Writ of Error is only a *Superfedeas* to the Execution, 1 Lev. 159.

Debt upon a Judgment against Executors in the *Detinet* for 20 l. Damages, and 8 l. Costs, and says not whether the Judgment was *De bonis Testatoris*, or *De bonis Propriis*, and shall be Assets when recovered, be it the one or the other. 1 Lev. 232.

Debt will lie for a Sum in Gross in the Nature of Rent, by way of Contract, when there is no Reversion, though there cannot be a Distress. 2 Lev. 80.

Assignee of the Reversion, must bring Debt for Rent in the proper County, but he may bring Covenant where the Lease was made: Because Debt is maintainable only upon the Privy of Estate; but Covenant goes only in Privy of Contract. Also Rent arises out of the Profits of the Land: And Covenant is a Collateral Thing, where Damages only are to be recovered. 1 Lev. 259.

Debt by the Lessor for the Moiety of his Rent, against an Assignee of the Moiety of the Land demised for the whole Term, well lies: Because the Assignee having the Estate in the Moiety of the Land, hath Privy of Estate sufficient to be charged by the Lessor with the Moiety of the Rent. 2 Lev. 231.

An Action of Debt, or a *Sci. Facias*, lies against a Sheriff for Monies which he hath levied, by Vertue of a Writ of *Fieri Facias*: For the Law doth not create a Privy by the *Fi. Fa.* betwixt the Sheriff and the Parry that sued it out. And the Money

If Error be brought on a Judgment in the *King's Bench*, the Record is not removed, but only a Transcript.

Debt lies upon a Judgment after Error brought.

Debt upon a Judgment against Executors in the *Detinet*.

held good: Because it is the one or the other.

Debt will lie for a Sum in Gross, in the Nature of Rent.

Assignee of a Reversion must bring Debt in the proper County.

Covenant goes only in Privy of Contract.

Debt by Lessor of a Moiety, against Assignee of a Moiety.

Debt or *Sci. Fa.* lies against a Sheriff, to restore Execution-Money received by him.

And the Money

Money levied is the Plaintiff's Due, which the Sheriff is bound by Law, when levied, to pay him. *Vide Mildmay & Smith's Case in Sand.*

Debt lies against an Executor of a late Sheriff, for Money received by the Testator.

Debt upon Bond, and says, That *A. B. per Nomen J. S.* became bound, and naught.

Bankruptcy in the Plaintiff, and an Assignment of the Debt pleaded.

701. Note, Unless the Debt be assigned, the Bankrupt may sue the Bond.

Debt or Case will lie upon a Parol Contract.

the Case: But the Defendant, in case of an Action of Debt upon a Parol Contract, may wage his Law.

Debt against an Executor for Rent in the Testator's Time; how to be.

How for Rent due after his Death.

Debt or Covenant lies upon a Covenant to pay *5 l. per Annum* for 5 Years, before the Years are out.

In case of an Obligation with Condition, or in case of a Penal Bill, Debt lies upon the first Breach.

there is a Breach of the Condition. *Ergo*, There is a Forfeiture by that one Breach, of the whole Obligation: But in case of a single Bill, it is otherwise.

Debt also lies against the Executor of a late Sheriff for Execution-Money received by him, in *Vltra sua Litem*. 382. to 384.

Debt upon a Bond, and says, That *A. B. per Nomen J. S.* became bound: And *Non est Factum* was pleaded, and a special Verdict found, and Judgment for the Plaintiff, but reversed afterward by Writ of Error. *Lam.* 894. d.

Debt upon a Bond, the Defendant pleads, That the Plaintiff is a Bankrupt, and sets it forth particularly; and that the Debt is assigned. *Lam.*

An Action of Debt doth lie upon a Parol Contract in Law between the Parties, and so doth an Action upon

An Action of Debt is brought against an Executor for Rent due in the Testator's Time, it must be in the *Debetur*: And for Rent due after the Testator's Death, it must be in the *Debet & Derivetur*. *Jones* 169, 170. *Cr. Car.* 225. contrary to the Opinion in *Hargrave's Case in Coke*.

Upon a Covenant to pay *5 l. per Annum* for 5 Years, Debt or Covenant lies for Non-Payment before the 5 Years are expired. 3 *Lev.* 383, 384.

But in case of an Obligation with Condition, or in case of a Penal Bill, they may be sued upon the first Breach, for a Penalty can be but once forfeited: And upon the first Non-Payment,



In pleading Conditions performed, how a Breach could be assigned formerly.

Stat. 4 &amp; Anne.

Must not say, *Testatum*  
*existit*, in Debt for Rent;  
but *Quod dimisit*.

*dimisit, otherwise it is  
Nil habuit in Tenementis,  
is no Plea to Debt for Rent  
upon an Indenture.*

Rep. 31.  
 That is, the  
 in the course of  
 an Plea upon a Deed

How an Administrator  
must bring Order to Room  
against the failure of the  
Institute.

1 Nov. 250. 251.

the Editor would be pleased  
upon the receipt of £10  
as a guarantee he is glad  
to accept for Rent against  
Wares and how to do



# Debet & Detinet.

Debet & Detinet, Sec { Declaration.  
Executor.

When Debet only, and  
when Debet & Detinet.

**W**here Money grew due to the Testator's Time, and afterwards the Executor doth not pay it, the Action shall be brought against him in the Debet only; and so in all Actions brought by Executors, although the Duty accrued in their own Time, because the Thing or Damages recovered shall be Assets: But if Lessee for Years makes his Executor, and dies, and Rent becomes due after the Testator's Death, there the Action shall be in the Debet & Detinet. So when an Executor or Administrator takes the Profits, nothing shall be Assets, but the Profits above the Rent. Co. Rep. 31.

How an Administrator must bring Debt for Rent against the Lessee of the Intestate.

An Administrator brings Debt in the Debet & Detinet against the Lessee of his Intestate, which Intestate was a Termor, and naught. For although in Debt against an Administrator, he shall be charged in the Debet & Detinet in respect of Possession, and taking of the Profits of the Land; yet in an Action by an Administrator of one who hath a Term, and makes a Lease, and the Reversion goes to the Administrator, there it must be in the Detinet only: Because all that shall be recovered, shall be Assets. 1 Lev. 250, 251.

Where and how to be brought for Rent against an Executor.

Debt against an Executor for Rent in the Debet & Detinet, brought in the County where the Land lies, and naught: Because though he is Executor, he is charged as Assignee in the Debet & Detinet upon the Privy of Estate, not upon the Privy of Contract; and the Action must be brought where the Land lies. 2 Lev. 80.

An Executor is not suable in the *Debet & Detinet* to Part, and in the *Detinet* to the other Part: Because they require several Judgments, viz. *De bonis Propriis* to one Part, and *De bonis testatoris* to the other. 3 Lev. 74.

An Executor shall be charged in the *Debet & Detinet* upon a *Devastavit*, the Action being upon a Judgment; but it is not allowable in an Action upon a Bond only: Because this Court will not carry this Matter further than it hath been carried before, viz. than to Debt upon a Judgment. 1 Lev.

Debt against an Heir must be in the *Debet & Detinet*: If it be in the *Detinet* only, it is naught, and not upheld by Verdict. 1 Lev. 130.

Cannot be sued in the *Debet & Detinet* for Part, and the *Detinet* for the other Part.

Executor chargeable for a *Devastavit* in an Action upon a Judgment, not upon a Bond.

It must be in the *Debet & Detinet* against an Heir.

B b

Deeds;

# Deeds,

Deeds, See

[First Part 240.

Non est Factum.

Date.

Leases.

Exposition.

Covenants.

Power.

Pleas.

Uses.

What a Deed is.

**A** Deed, is a Writing, either indented or not indented, or else a Deed-Poll; which Writings being signed, sealed and delivered, do prove and testify the Agreement of the Parties whose Deed it is, to the Matters contained in such Deed.

What Things are of the Essence and Substance of a Deed.

There are but Three Things of the Essence and Substance of a Deed  
*viz.*

1. *Writing in Paper or Parchment.*
2. *Signing and Sealing.*
3. *Delivery: For when a Deed is delivered, it takes its Effect from the Delivery, and not from the Date. 2 Rep. 5. a.*

There are Three Grounds for the Exposition of Deeds:

Three Grounds for the Exposition of Deeds.

1. *They must be most Beneficial to the Taker. Carter 105. Poph. 12. 1 R. 76. Raym. 142.*

2. *They shall never be void, where the Words may be implied some Intent. Flo, 160, b.*

3. *The Words shall be construed according to the Intent of the Parties, and not otherwise.* Plo. 160. b. *So that all Parts may be effectual.* Poph. 138. Carter 98.

The Law shall never make any Construction against the Purport of a Deed to the Prejudice of any, or against the Meaning of the Parties. *Co. Litt. 313. a.*

What Deeds of Declaration of Uses or Trusts, or for the leading of the Uses of any Fines or Recoveries shall be good, by the Statute of 4 & 5 Anne, notwithstanding the Statute of Frauds. *See Title Uses.*

Such Construction ought to be made of a Deed, that it may agree with the Rule of the Law, and the Intent of the Parties to the Deed, and that all the Deed may stand together. *7 Rep. 42. a.*

The Indenting or not Indenting of Deed, is not material; but the being or not being Party, is the material thing: *For one who is not a Party to a Deed made between Parties, cannot take, unless by Way of Remainder.* 3 Lev. 139, 140.

*Prima Facie*, every Deed is supposed to be made the Day it bears Date. *Lev. 348.*

The Deed of a Subject hath Relation only to the Time of the Delivery, and not of the Date: But the King's Charter to the Time of the Date only. *Radford and Gretton. 2 Plo. 491. b.*

Where a Deed is by Letter of Attorney signed and sealed, it ought to be sealed and subscribed with the Name of the Master who gave the Authority. *3 Lev. 140. See Title Power.*

A Deed cannot be delivered as an Escrow to the Party himself, who is to take by the Deed: For the Delivery of it to the Party who is to take the Deed, makes it the Parties Deed who delivered it, and it must work upon the Delivery. *See 9 Rep. 137.*

What Constructions to be made.

What Deeds of Trust, Uses, &c. shall be good.

4 & 5 Anne.

How the Construction of a Deed ought to be.

What is the Material Thing in a Deed.

Every Deed is supposed to be made the Day it bears Date.

To what Time the Subjects Deed hath Relation:

And to what the Kings.

How a Deed is to be executed by Letter of Attorney.

A Deed cannot be delivered as an Escrow to the Party himself.



The Words in an Indenture, are the Words of all Parties.

A Seal broken off, where it destroys the Deed, and where not.

If a Deed says, *This Indenture*, when it is not indented, it may operate as a Deed Poll.

Where a Covenant may be with a Stranger to the Deed.

between Parties: Because no Stranger can take Advantage thereof by way of Action. 3 Lev. 139. 140.

How and when an Illiterate Man is bound to make a Deed.

can read it to him, if by him required: But if no Person be there who can read it, he may refuse to execute it. 2 Rep. 3. a, b.

A Deed read falsely to an Illiterate Man, is not his Deed.

only: And adjudged to be no Deed, because it was read falsely to him, although by a Stranger of his own Head. 2 Rep. See 11 Rep. 27. b. 28. a.

Such Person is not bound to seal, unless there be a Person present who can read it.

A Freehold cannot commence in *Futuro*.

## Deeds.

The Words in an Indenture, are the Words of all Parties to it, and the Words shall be taken according to the Intent of the Parties. 1 Plow. 134.

Where Covenants are several, if the Seal of one is broken off, it avoids not the Deed, but only as to him. But if the Covenantor's Seal be broken off, it destroys the Deed. 5 Rep. 23. a. 11 Rep. 27. a.

If a Deed says, *This Indenture made* whereas the Deed is not intended, yet it may be a good Deed to some Effects; for it may work as a Deed Poll, though it cannot work as an Indenture. 5 Rep. 20. b.

Where a Deed is by Indenture and not between Parties, a Covenant may be with a Stranger as if it were a Deed Poll; but otherwise it is be-

If an Illiterate Man be bound to make a Deed, he is not bound to seal and deliver any Writing tendered to him, if some Body be not present who

can read it to him, if by him required: But if no Person be there who can read it, he may refuse to execute it. 2 Rep.

A Deed was brought to an Illiterate Man to seal as an Acquittance which in Truth was a Release, but read by a Stranger as an Acquittance

only: And adjudged to be no Deed, because it was read falsely to him, although by a Stranger of his own Head. 2 Rep.

See 11 Rep. 27. b. 28. a.

Also such Illiterate Person is not bound to execute the Deed, unless there be a Person present who can read it. Also, although the Writing be not read, yet if the true Effect be declared, it is sufficient. 2 Rep. 9.

An Estate of Freehold cannot commence in *Futuro*. 2 Rep. 55. a.

When the Person at the first Delivery hath no Power or Ability in Law to make such Deed, and before the second Delivery he hath a Power, yet the Deed is void. But when the Person at the first Delivery had Power and Ability in Law to contract, but cannot perfect this, till an Impediment be removed before the second Delivery, the Deed is good. 3 Rep. 35. b.

Where the Person had no Power to make it a Deed, and afterwards had.

Estates by Implication may be by Will, but not by Deed. 2 Lev. 79.

Estates by Implication may be by Will, not by Deed.

A Man seized in Fee by his Deed, in Consideration of the Natural Love and Affection which he beareth to his Daughter, and for an Augmentation of her Portion: And for her better Preferment, Advancement, Maintenance and Livelihood, doth give, grant, bargain, sell, alien, enfeoff, and confirm to her with Warranty. This Deed had no other Execution, but Enrolment in Chancery within Six Months, and was made for those Considerations aforesaid, and none others; neither was the Daughter in Possession at the Time of the Grant, or any Livery made.

Where Give, Grant, Bargain, Sell, Enfeoff, and Confirm, in Consideration of Natural Affection, amounts to a Covenant to stand seized.

In this Case it was adjudged by the King's-Bench, and affirmed in the Exchequer-Chamber, That this was a good Deed, by way of Covenant, to stand seized to Uses, and that the Enrolment made nothing in the Case.

A good Deed by Covenant to stand seized to Uses,

And, 1st, it was held, That the Words (*Covenant to stand seized to the Use*) are not absolutely necessary in a Deed.

2dly, That no Conveyance admits of such Variety of Words, as a Covenant, to stand seized to Uses, doth.

3dly, That if the Words, Give and Grant, had been alone in the Deed, there would have been no Question in the Case; and that *Utile per inutile non vitiatur*.

4thly, That they sometimes were taken as a Grant, sometimes as a Release, and must be always taken most strongly against the Grantor, In *Per Crossing & Scudamore in Ventris*, or some of the Modern Reports,

Oftentimes taken in various Senses.

Where Oath must be made of the Loss of a Deed, and where not,

ly triable at the Common Law: But if the Case be proper in its own Nature for a Court of Conscience, there, though it be alledged that the Deed is lost, Oath need not be made of it, as where a Performance in Specie is desired: Because there the Common Law cannot grant Relief, but it can only give Damages for Covenants broken.

When a Bill in Equity is exhibited to have Money due upon a Bond that is lost, there must be Oath made of it, otherwise such Cause is properly

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# Exchange.

Exchange, is where a Man is seized of certain Lands, and another Man is seized of other Lands: If they by Deed indentured exchange their Lands, so that each shall have the others Lands so exchanged in Fee, Fee-Tale, or for Life; this is an Exchange, and it is good without Libery. Lit. Sect. 62.

Exchange, *Quid.*

In every Exchange, the Word *Excambium* imports in it self tacitly a Condition and a Warranty; the one to give Re-entry, the other Voucher and Recompence: *Also the same is of a Partition.* 4 Rep. 121.

The Import of the Word *Excambium.*

If a Man gives Three Acres in Exchange for Three other Acres, and one Acre is evicted, here all the Exchange is defeated; and he who gives the Three Acres in Exchange, may enter again into his own Land: And the same Law of a Partition. *Ibid.* 121. b.

Where Part given in Exchange is evicted.

When the entire Estate in Part is evicted, all the Exchange is defeated: So when but Part of the Estate is evicted in all the Land, or in Part, by this the Whole Estate may be defeated by Force of the Condition in Law. 4 Rep. 122. b.

When Part is evicted, the Whole is defeated.

An Exchange of Lands must be executed by Entry; for if one dies before the Entry, the Exchange is void: For the Heir cannot take as a Purchase; because he was named only to take by way of Limitation of Estate, in Course of Descent. *Co. Litt.* 50. b.

How to be executed.

There needs no Transmutation of Possession; and therefore a Release of Rent or Estovers, or Right to Land in Exchange for Land, is good. *Co. Litt.* 50. b.

A Release of one Thing in Exchange for another.



# Ejectment.

Ejectment, See { First Part 241.  
Delivery.  
Waste Profits.

An Action of Ejectment, what it is.

**A**n Action of Ejectment (which is now become the Common Action wherein Titles of Land are tried) lies to recover a Possession of Lands, &c. which is illegally kept from the Right Owner; and in this Action he recovers Possession.

How to proceed to recover Possession upon an Ejectment.

If one seal a Lease of Ejectment upon the Land to try a Title, it is not necessary to give Notice of the sealing of this Lease unto him whose Title is concerned: But it is sufficient to give Notice to the Tenant in Possession of the Land in Question, by delivering to him a Copy of the Declaration in Ejectment: For the Possession of the Land is primarily in Question in this Action, and is to be recovered. Which Possession doth properly concern the Tenant of the Land, be the Title in whom it will, though the Title of the Land doth also come in Question, and is tried collaterally. But now by the new Way of Practice, it is not usual to seal any Lease of Ejectment at all in any Action of Trespass and Ejectment (except only where a House or Land is empty) and that Person who was last in Possession is run away, and

How, in case of an Empty House.

Rules to plead. (But you cannot have Judgment against the Casual Ejector without a Motion of Court for that Purpose after the Rules for Pleading are out.)

The new Practice of delivering of Declaration in Ejectment.

you cannot find any Person to deliver the Declaration to: Then you must proceed the old Way, by sealing a Lease upon the Ground, and give But now by this new Practice, which is to deliver a Copy of the Declaration in Ejectment to the Tenant in Possession.

Possession, or his Wife (a Delivery to a Son, Daughter or Servant, not being good), there must be upon such Copy, an Endorsement or Subscription in *English*, acquainting the Tenant what the Thing is; which Endorsement or Subscription, or the Substance thereof, must be read to the Tenant, by the Person who delivers the same, at the Time of the Delivery thereof. Which Person must also tell the Te-

nant, *That unless he forthwith shall procure some Attorney of the King's Bench, or other Court where his Action is brought, to appear for him, and defend his Title (if he hath any), he shall be turned out of Possession; or Words to that Effect.*

The Manner of delivering Ejectments.

Now if the Tenant doth not appear the Beginning of the next Term, then upon Affidavit made of the Delivery of a Copy of the Declaration thereunto annex'd unto the Tenant or his Wife, and reading of the Endorsement or Subscription as aforesaid, or acquainting of them with the Contents thereof, the Court will make a Rule for the Tenant to appear, and plead by a certain Day. At which Time, if the Tenant

When the Tenant must appear and Confess, Lease, Entry and Ouster.

appears, he must by his Attorney file Common Bail, and draw up a Rule to Confess, Lease, Entry and Ouster, and leave it at a Judge's Chamber, and give Notice thereof to the Plaintiff's Attorney to proceed, if he thinks fit:

But if the Tenant in Possession doth not appear, then after the Day appointed by the Court for the

When Judgment will be enter'd against him.

Tenant to appear and plead, which appears by the Rule, Judgment will be entered up against the Casual Ejector by Default; and the Tenant in Possession will be, by an *Habere Facias Possessionem* upon such Judgment, turned out of his Possession.

Who shall be admitted to be joined with the Tenant.

No Person shall be admitted to be Defendant in Ejectment with the Tenant in Possession, but he that hath been in Possession, or receives the Rents. *5 W. & M. B. R.*

The Court will not suffer the Plaintiff to amend his Declaration in Ejectment after Delivery, and before Plea pleaded: But the Plaintiff must stand and fall by his Declaration as it is, or deliver a new Declaration. *Trin. 5 W. & M. B. R.*

*where*





And where an *Habere Facias Possessionem* was sued out and executed after a Year and a Day, without a *Sci. Fa.* a Writ of Restitution was awarded by the Court, *Quia Erronice emanavit.* Mich. 1 *Annae, Wither's Case.*

In every Ejectment, the Plaintiff ought to set forth in his Declaration.

How to declare in an Ejectment.

If it be of a Manor, then *Manerium de D. cum Pertinentiis* : Or if of a Rectory, *Rectoriā de D. &c.* And then say, so many Messuages, so many Cottages, so many Acres of Land, so many Acres of Meadow, so many Acres of Wood, &c. *cum Pertin.* in *D.* which must be the Parish where the Lands in Question do lie : But the Demise may be said to be made in some other Parish in the County, to the End that there might be a good Venue. But now by the Stat. 4 & 5 *Annae* it is enacted, That every Venue for the Tryal of any Issue, shall be awarded of the Body of the County wherein the same is to be tried.

Where to lay it.

4 & 5 *Annae.*

Note, Where the Ejectment was of *Manerio* only, without saying of any Land : And the Jury find the Defendant Not Guilty, *quoad* an House and some Land, and Part of the Manor : The Court was in Doubt what Judgment to give. *Latch.* 61, 62.

Ejectment of a Manor, and an House only found.

An Ejectment was brought for Non-Payment of Rent ; the Court was moved to stay Proceedings, upon Payment of the Rent and Costs to be adjusted by the Secondary, which the Court granted : And also ordered a new Lease to be executed at the Defendant's Costs. Mich. 8 *W.*

Cause stayed upon Payment of the Rent and Costs :

And a new Lease was ordered.

You may lay as many Demises in a Declaration in Ejectment as you please : And if the Plaintiff recovers upon one of them, it is sufficient *pro tanto.*

Several Demises may be laid in one Declaration, and how to be.

As for the Purpose for Lands in Gavelkind, the Plaintiff declares, That *A. B. C. D. &c.* 10 Dec. &c. did demise to him 100 Acres of Land in *D.* in Com. Kant. in forma sequen. Videl' *A. B.* demised to the Plaintiff one Third Part, *Habend. & Tenendum, &c.* And also that *C. D.* demised to him one Sixth Part of the said 100 Acres of Land, *Habendum, &c.* And also that the said *E. F.* demised to him one Third Part : And also one Sixth Part of the said 100 Acres of Land, *Habendum, &c.* By Vertue of



of which several Demises, he enter'd, and was possess'd, &c.  
*Pas. 1 Jac. 2. R. Rot. 332. B. R. 3 Lev. 117.*

Of what an Ejectment  
 lies not.

Not lie *de Pecia Terre*:

Nor *de Uno Clauso*.

although it is said, containing three Acres of Land; yet not  
 having said what Sort of Land, as Meadow, Pasture, &c. it is  
 naught. *11 Rep. 55. a.*

Nor *de Communia Pastu-  
 ra*:

Nor of a Fair.

Not *de Pannagio*, nor  
 of the fourth Part of a  
 Meadow.

It lies for a Curtilage,  
 for a Stable, an Orchard,  
 Cottage.

For a Vestry: For Two  
 Closes called G.

It lies for a Church, for  
 a Chapel.

For Tythes, how.

*Agnorum*, or some Certainty of the Nature or Quality of the  
 Tythes whereof Judgment may be given. *11 Rep. 25. b. See*  
*Title Ejectment in the First Part of what an Ejectment lies not.*  
*Fol. 243, 244, 245, 246, 247.*

Where the Plaintiff shall  
 recover Damgages, but not  
 the Possession.

Ouster, and gives in Evidence a Title to himself; which com-  
 menc'd *1 Jan.* Here the Plaintiff shall recover his Damgages  
 from the first of *Dec.* to the 1st of *Jan.* but shall not recover the  
 Possession: Because it appears by the Verdict that he had no

An Ejectment ought to be brought  
 for a Thing that is certain. It doth  
 not lie *de Pecia Terre*. *Mo. 564. nor*  
*de Uno Clauso*. *Cro. Eliz. 339.* altho'  
 it hath a certain Name: But it ought  
 to be of so many Acres of Land. And

Also it doth not lie *de Communia*  
*Pastura*; nor of a Fair: But *de Man-  
 rio de B. cum Pertinen.* if the Fair is  
 Appurtenant, is good: It doth not lie  
 for a Croft for the Uncertainty to  
 make Execution upon.

It lies not *de Pannagio*; nor of the  
 fourth Part of a Meadow. *1 Lev.*  
*213.*

Ejectment lies for a Curtilage,  
*4 Mod. 1.* It lies *de uno Stabulo, de*  
*uno Pomario, uno Cottagio.* *1 Lev. 58.*  
 It lies *de quodam Loco Vocat' le Vestry*  
 of such a Parish, & *de duobus Clausis*  
*Vocat' Gabels.* *3 Lev. 96, 97. 10 Fol.*  
*201.*

Ejectment lies of a Church, as *de*  
*una Domo Vocat' the Parish-Church of*  
*B. de una Capella.*

For Tythes, it must not be, *de*  
*omnibus & omnimodis Decimis in W.*  
 without saying *Garbarum Feni, Lene,*

If a Man brings an Ejectment, and  
 lays the Demise (suppose) *1 Decembris*  
 and he had then a Title, and the De-  
 fendant confesseth Lease, Entry and

Title

## Ejectment.

381

Title to the Land the first of Jan. *Whitfeild's Case, 5 Anna*

*B. R.* A Judgment was obtained in an Ejectment by Default, and a Writ of Possession executed; and the Tenant and all his Family turned out of Possession; and the Tenant was immediately re-admitted upon his attorning Tenant: Afterwards another Person serves the Tenant with a Declaration in Ejectment, and the Tenant attorns to him; and the first Man who recovered, sued out a Writ of Possession upon his Judgment, and executed it; but it was set aside: Because the Plaintiff had upon his first Execution the Effect of his Judgment, and might have kept the Possession when it was delivered to him by the Sheriff. *5 W. & M.*

A Rent granted with a *Proviso*, That if it be not paid then, that he may enter and retain the Land, *Quousque, &c.* the Grantee hath here such an Estate as will maintain an Ejectment. *1 Lev. 170.*

Where a Declaration in Ejectment is made (for the Purpose) of *Easter-Term*, and the Demise is laid after the End of *Easter-Term*, and before the

Essoin-Day of *Trinity-Term*; and also delivered before the Essoin-Day of *Trinity-Term* to the Tenant in Possession; yet this shall be good, though the Demise is laid after *Easter-Term*: Because when the Tenant in Possession appears, he must be made a Defendant, and accept a Declaration of *Trinity-Term*, and plead thereunto Not Guilty; and at the Tryal, Confess, Lease, Entry and Ouster, otherwise there will be Judgment against the Casual Ejector: So that when the Declaration to which the Tenant is made a Defendant is made of *Trinity-Term*, that is then after the Demise, and so it is well. *5 W. & M.*

If the Defendant doth not at *Nisi* *Prima* Confess, Lease, Entry and Ouster, according to the Rule, then the Plaintiff must be nonsuit, but there must not be any Costs tax'd against him:

Where Judgment is had, and a Writ of Possession executed.

And the Tenant afterwards re-admitted.

Another Ejectm. brought, the Tenant attorns.

The first Man sues out another Writ of Possession, and naught.

What Estate will maintain an Ejectment.

What Estate as will maintain an Ejectment.

Where the Demise is laid before the Time in the Ejectment Declaration.

How to get Costs upon a Nonsuit for not confessing the Lease, Entry, &c.

But

But the Rule for confessing of Lease, Entry and Ouster, must be carried to the Secondary, who taxes Costs upon it, which Costs must be demanded of the Defendant, by some Person having an Authority from the Plaintiff's Lessor for so doing; and if the same are not paid, the Court will, upon an Affidavit and Motion, grant an Attachment against the Defendant. How to get Possession afterwards, see Title *Postea*.

**Evidence**

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# Evidence,

First Part 247.

Copies.

Compulsion.

Evidence, See

Depositions.

Demurrers.

Oyer.

Recital and Disrecital.

**E**vidence, generally speaking, is used for some Proof, either by Testimony upon Oath, or else by

Evidence, what it is.

Writing, or by Records.

One shall not give in Evidence an Account of the Substance of a Letter, without the shewing of it, or informing of the Court how it came to be lost. *Trin. 9 W. B. R. at Guildhall.*

One shall not be bound to give an Account of the Substance of a Letter, without shewing or making out how lost.

A Person, who was condemned to be hanged for Burglary, but having a Pardon for Transportation, was allowed to be a good Witness. *Ibid.*

Where a Person condemn'd shall be allow'd to be a Witness.

Where a Person confessed that he was convicted, but said also that he had a Pardon: This made him a good Evidence, for you must take all his Confession together; so the Pardon superseded the Conviction. *Ibid.*

A convicted Person pardon'd, is a good Evidence.

Depositions taken in Chancery of Persons who are dead, may, by Order of the Court of Chancery, be read as Evidence to a Jury, upon a Tryal

When Depositions in Chancery may be Evidence.

at the Bar by the Plaintiff or Defendant, or both, if the Depositions were taken in the Cause, which is to be tried at the Bar, and between the same Parties that are Plaintiff and Defendant in the Tryal: But the Copy of the Bill and Answer must



must be first proved, Whether they may be read, if there be no Answer. See *Show. Rep.* 363. Yet there need be but a Line of two read: For they are not to be read as Evidence, but as a Means to read the Depositions.

What Proof of an Affidavit will do, and what not, upon an Indictment of Perjury.

But a Copy of an Affidavit only produced against a Man, without Proof that he made it, or was concerned in the Cause, will not do. *Show. Rep.* 397.

Where Pleading of *Plene Administravit* admits the Debt, and where not.

of a *Plene Administravit*, if it be Debt on Bond, and you offer to prove Payment of a Bond before your Action brought, you must prove it to be a Debt, and that the Bond was sealed and delivered. *Show. Rep.* 81.

What is good Evidence to prove an Executor.

What Writings a Jury may carry with them.

Court, as Evidence for them to consider of, \*but such as are under Seal, and have been proved in Court: For others are of no Credit, and are no Part of the Evidence which they are to consider upon.

Where Evidence shall be given of Tampering.

Who shall be counted an Agent.

A Witness shall not make himself Criminal.

Where Depositions in Foreign Language shall be admitted.

Upon an Information of Perjury in an Affidavit, a Copy of the Affidavit produced, and proved to be made Use of by him upon a Motion in the Cause, was held to be good Evidence:

In Debt, *Plene Administravit* admits the Debt, but otherwise it is in an Assumpsit, for there the Plaintiff must prove the Debt; and in Proof of a *Plene Administravit*, if it be Debt on Bond, and you offer to prove Payment of a Bond before your Action brought, you must prove it to be a Debt, and that the Bond was sealed and delivered. *Show. Rep.* 81.

The Probate of a Will was adjudged to be good Evidence, to prove that the Testator made an Executor. 9 W. B.

The Court will not permit the Jury upon a Tryal at Bar, to carry any Writings with them out of the

Court, as Evidence for them to consider of, \*but such as are under Seal, and have been proved in Court: For others are of no Credit, and are no Part of the Evidence which they are to consider upon.

The tampering with Witnesses by an Agent, or doing any other Criminal Act, shall be given in Evidence against the Party whose Agent so acted.

A bare Witness is not an Agent; but he that manages by the Authority of another, is an Agent.

One shall not ask a Witness a Question; the affirmative Answer to which may draw him into a Crime.

Depositions taken in Dutch, and translated into English, by a Publick Notary in Holland, and signed afterwards by the Commissioners and Parties

ties examined: The Translation was not allowed to be read, because it did not appear that they were truly translated.

Depositions taken of one out of the Realm; the Person who makes the Depositions shall be taken to be there still, and shall be read: But if it can be made appear that he is in England, then his Depositions cannot be read, but he must come in Person.

In an Action of Disceit, the *Sciens* need not to be proved at the Tryal; because it shall be presumed, that the Party knew whether the Wares were good or no. See Title Actions, and Title Disceit.

The Copies of Publick Books, as Corporation Books, &c. shall be allowed to be Evidence, as well as Proceedings in Spiritual Courts, Admiralty Courts, or Courts Baron, which are not Courts of Record: So likewise the Copy of the Probate of a Will for Goods only, but not for Lands. For the Spiritual Court hath no Conuzance of Lands: For as to Lands, it is but a Copy of a Copy, which cannot be given in Evidence. See 1 Lev. 25.

The Evidence which a dead Person gave in a former Tryal was offered, but denied; because they had not a Copy of the Record of the Tryal where the Evidence was given.

Upon a Tryal at Bar, in an Ejectment, a Mortgage Deed enrolled Seven Years after the Date, (the Original being lost) was allowed for Evidence, upon slight Proof that there was such a Deed. 4 W. & M. B. R.

A Counterpart of a Deed was allowed to be given in Evidence. 3 Anne, B. R.

Fraud, or no Fraud, within the Statute of 31 Eliz. cap. 5. may be given in Evidence upon the General Issue. *Anderson's Case*.

Where Depositions are taken of one beyond Sea.

The *Sciens* need not to be proved in an Action of Disceit.

Where Publick Books, as Corporation Books, &c. may be given in Evidence.

the Copy of the Probate

Also, Proceedings in the Spiritual Court.

*Mich. 3 W. B. R.*

Where the Evidence of a dead Person may be allowed, and where not.

Where a Deed enrolled Seven Years after the Date, was given in Evidence.

A Counterpart of a Deed allowed to be given in Evidence.

Fraud, or no Fraud, may be given in Evidence on the General Issue.

31 Eliz. cap. 5.

The Writ ought to be pleaded as it is, without a Variance.

Where a Deed enrolled may be given in Evidence, tho' the Estate passeth not.

Where a Recital is Evidence, where not.

Where a Citizen may be a Witness for the City, and where not.

When married, not admitted to be given in Evidence.

Witness, to prove that she was not married to A. B. but the Court would not admit it. 9 W. B. R.

In an Issue upon Usurious Agreement, the Witness called to prove it, declaring he was the Plaintiff's Attorney, and employ'd to draw the Agreement; the Court would not allow him to be examined.

That he was employ'd by the Plaintiff to draw the Agreement between the Plaintiff who was High-Sheriff of K. and Under-Sheriff; and therefore prayed, That he might not be put to discover his Client's Secrets wherein he was entrusted. Whereupon the Court declared, That he ought not to be obliged to answer that Question: And thereupon, for want

*Per Curiam*, It would be an Hindrance to all Commerce and Conversation.

## Evidence.

A Declaration sets forth a Writ *De placito Transgressionis*; and the Writ given in Evidence is *Trespas, Ac etiam Bille*; this is naught. 2 Lev. 85.

Where a Deed enrolled doth not pass the Estate, it shall be Evidence to some Purposes. 3 Lev. 387.

A Recital of a Deed is no Evidence without procuring of the Deed itself, or an Enrolment of it. 2 Lev. 189.

A Citizen may be a Witness for the City, where the Concern is the City, and not any particular Persons; but where they shall not be Evidence see 2 Lev. 231, 236.

Where the Point in Issue was Whether A. B. was married to C. D. before he had married E. F. or no C. D. was offered to be produced

An Issue was joined upon a corrupt Agreement, and a Witness was called to prove this Agreement; and being sworn and ask'd by the Defendant's Council, what Money he knew to be paid upon that Agreement? He appeared to the Court, and declared That he was and had been for many Years the Plaintiff's Attorney, and

that he was employ'd by the Plaintiff to draw the Agreement between the Plaintiff who was High-Sheriff of K. and Under-Sheriff; and therefore prayed, That he might not be put to discover his Client's Secrets wherein he was entrusted. Whereupon the Court declared, That he ought not to be obliged to answer that Question: And thereupon, for want of Evidence, the Jury found a Verdict against the Plaintiff. The Court declared, If this should be admitted it would be a manifest Hindrance to all Society, Commerce and Conversation. Mich. 5 W. & M.



Where there are several Witnesses to a Deed, and they are all dead but one, who cannot be found; you shall not be admitted to prove the dead Mens Hands, until you have taken out a *Subpoena* against the living Man, and made strict Enquiry after him, and have Affidavit of this Matter, and also that he cannot be found; but if you can prove them all dead, then you need only to prove their Hands: Therefore it is not advisable to have too many Witnesses to a Deed.

How to prove a Deed, when all the Witnesses but one are dead.

Where an old Term was granted by a Bishop to Queen Elizabeth, and by her assigned over; and by her Assignee assigned over (as is supposed) to J. S. who, and several Generations after him, have had and continued in Possession; but the House of one of the Family being burnt in the Year 1643, where it is also supposed the Original Assignment was burnt, and Twelve Years afterwards a Grant of the Residue of the Term, mentioned to be a Term of above seventy Years, was held to be a good circumstantial Evidence to prove the Grant of the Term from the Assignee of Queen Elizabeth. Mich. 11 W. B. R.

What shall be good Evidence to prove the Grant of a Term from an Assignee, when the Original is thought to be destroyed.

Camden's History of England was offered to be given in Evidence upon Trial at the Bar: But the Court would not admit of it. *Staynor & Harris. Mich. 7 W. & M. B. R.*

Neither shall an Entry in the Herald's Office be allowed good Evidence to prove a Pedigree for an heir: Because they are not Matters of Record, but allowed only as circumstantial Evidence.

Camden's History not allowed for Evidence.

Nor an Entry in the Herald's Office.

But Herald's Books were admitted to be good Evidence to Triers of Challenge, to prove Cosinage in the Sheriff. 2 Plow. 426. a. Vernon & others.

Herald's Books admitted to be good Evidence to Triers of a Challenge.

In an Action for a false Return on a *Mandamus*, the Court will not make a Rule for the Town-Clerk to produce the Books to the Plaintiff, unless he will give a Note in Writing of the Use he intends to make of them. 8 W. B. R.

Where the Court will order a Town-Clerk to produce his Books, and where not.



What may be said, against a Probate of a Will.  
And what not.

*Mentis*: But Evidence may be given, that the Seal was forged, or that there were not *bona Notabilia*. 1 Lev. 236.

What is good Evidence to prove the granting of Administration.

Trial to prove the granting of an Administration, and allowed to be good Evidence. 1 Lev. 25.

A Counterpart of an Ancient Lease found among old Writings, allowed to be good.

A Sister examined in *Chancery* for her Brother's Inheritance, who dies, and she is one of his Coheirs; her Depositions shall not be read in a Trial at Law.

*Bar* for this Estate: In which Cause, the Sister, who was the examined Witness in *Chancery*, was one of the Plaintiffs: And the Question was, Whether her Deposition should be read for the Plaintiffs. And upon Mr. Justice Tracey's going to the *Queen's Bench*, and conferring with the Justices there, and making of his Report upon his return to the *Common Pleas*, was adjudged, That the Depositions should not be read. *Hil. 2 Annae, C. B.*

Where the Money due for Rent is ordered to be paid to a Receiver; whether one interested in the Estate, and bound to indemnify the Tenants, can be a Witness of their Payment of Rent to the Receiver.

rents into the Receiver's Hands; but the other Side having gotten his Bond, he could not get it up. And whether should be admitted to be a Witness or no, notwithstanding

Where the Probate of a Will is produced in Evidence, the Defendant cannot say that it was a forged Will, or that the Testator was *Non compos*.

The Book of the Ecclesiastical Court, wherein are entred the Acts or Orders of Court for granting of Administrations, was produced at a

A Counterpart of an Ancient Lease, without Witnesses, produced by a Grandson, and found amongst other Writings of his Grandfathers, was allowed to be good Evidence. 1 Lev. 25.

A Sister is examined a Witness in *Chancery* for her Brother, concerning his Inheritance. The Brother dies, and the Estate descends to her with other Sisters, as Coheirs, to the Brother. Afterwards, there comes to be a Trial at the *Common Pleas*

An Estate is in Dispute. A Man gives his Bond to his Tenants to indemnify them for Payment of the Rent to him: Afterwards, upon a Suit in *Chancery*, the Rent is ordered to be paid to a Receiver, and to lie in his Hands until the Court should further Order. The Person bound pays the Money which he received of the Tenants

his Bond lay out against him, was the Question. And it was adjudged, That he should, and was Sworn accordingly. *Hill.*

2 *Anne, C. B.*

**Evidence** admitted to Bastardize a Son after the Death of the Father and Mother: And also against a Patent and Act of Parliament, which called him Son and Heir. 3 *Lev.* 410.

Evidence admitted to Bastardize a Son after the Death of his Father and Mother.

**Altho'** Judgment of the Pillory infers Infamy at the Common Law: Yet by the Canon and Civil Law, it doth not import any Infamy, unless the Cause for which he was convicted was infamous. And unless he was convicted for an infamous Cause, he shall be a good Witness to prove a Will. 3 *Lev.* 426, 427.

One that had Judgment of the Pillory, may be an Evidence, unless convicted for an infamous Cause.

# Emparlance.

Emparlance, See

First Part 257.

Abatement.

Declaration.

Tender.

Emparlance, what it is.

**E**mparlance, is when one is to answer to the Action of another, he desireth some Time to advise what he shall answer; and it is nothing else but the Continuance of the Cause till a further Day.

Where an Emparlance to a Declaration upon a Cause removed by *Ha. Cor.*

If a Cause be removed in the Vacation Time out of London, Middlesex, or the Marshal's Court or other Court within Five Miles of London, by *Habeas Corpus*, or *Certiorari*, returnable Immediate, and Bail be put in. If the Defendant doth not deliver his Declaration Eight Days before the end of the Term, then the Defendant may emparl of Course; but if it be delivered Eight Days before the end of the Term, then the Defendant must plead to enter: And in *Michaelmas* Term, if it be delivered before *Crastin. Animarum*, or in *Easter* Term before *Mensem Pascha*, then the Court was not satisfied, whether he must plead to try it the same Term if the Plaintiff will, as in the Case of a *Cepi Corpus*.

Where an Emparlance upon a *Cepi Corpus*:

When a Declaration upon a *Cepi Corpus* is delivered against the Defendant in *Hilary* or *Trinity* Terms, wherein the Writ is returnable, (if it be by Bill) or within the next Term following: The Defendant may, by the Rules of the Court, emparl to the next Term after the Term wherein such Declaration is delivered: But if the Declaration be delivered in *Michaelmas* Term before *Crastino Animarum*, and in *Easter*

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*After Term before Michem Rascha,*  
the Defendant must plead to try the  
Cause if the Plaintiff will; and when  
delivered after, must plead to enter.  
doth not appear, but the Bail-Bond is sued, and afterwards in  
another Term Bail is put into the Original Action, and a  
Declaration is delivered forthwith upon that Bail, there the  
Plaintiff may give Rules to plead presently; and if he do not  
plead before the Rules are out, he may sign Judgment: Be-  
cause the Fault here lies only in the Defendant, against whom the  
Plaintiff could not declare until he had put in Bail; and he shall  
never take Advantage of his own Laches.

Also where the Plaintiff sues out a  
special Original against the Defen-  
dant, wherein the Cause of Action is  
mentioned, and the Defendant is ta-  
ken upon a special *Capias* upon that  
Original: Here the Defendant shall have no Emparance; but  
must plead as soon as the Rules are out. The Reason is this;

Where the Writ is General, the Cause  
of Action appears in the Declaration,  
to which the Law allows the Defen-

dant convenient Time to consider of, and advise upon, before  
he pleads: But when the Defendant is taken upon a Special  
*Capias*, there the Declaration is mentioned in the Writ it self;  
and the Defendant sees what the Cause of Action is, and may  
take a Copy of it, and prepare his Answer ready against the  
Term, by the Time that the Rules for Pleading are out.

Where the Defendant's Case re-  
quires a special Plea, and the Matter  
which is to be pleaded is difficult;  
the Court will, upon a Motion, grant  
the Defendant longer Time to put in  
his Plea than otherwise by the Rules of the Court he ought to  
have: But without a Motion, and Leave of the Court, he can-  
not have longer Time.

Where the Plaintiff doth keep  
any Deed or Writing, or other Thing,  
from the Defendant, which doth be-  
long unto him, and whereby he is to  
make his Defence, and is disabled,  
by the retaining thereof, to plead for his best Advantage: The  
Court will upon a Motion grant an Emparance to the Defen-  
dant, until the Plaintiff do deliver it unto him, or bring it into  
Court; and also a convenient Time after, till he can draw up  
his Plea.

And where not.

But if the Defendant  
is sued, and afterwards in  
the Original Action, and a  
Declaration is delivered upon that Bail, there the  
Plaintiff may give Rules to plead presently; and if he do not  
plead before the Rules are out, he may sign Judgment: Be-  
cause the Fault here lies only in the Defendant, against whom the  
Plaintiff could not declare until he had put in Bail; and he shall  
never take Advantage of his own Laches.

Where the Plaintiff sues  
out a special Original, the  
Defendant shall not em-  
parl:

And the Reason why.

The Court upon Motion  
will prolong the Time for  
Pleading, if there be Oc-  
casion for it.

Where the Plaintiff keeps  
any Writing from the De-  
fendant, the Court will  
give him Time to plead  
till after it is brought in.



How Judgment to be upon a Plea to the Jurisdiction of the Court after Emparlarice.

nuate that the Freehold would be tried. The Plaintiff Demurs, and the Plea held naught. And it was moved, That the Judgment should be final, because he pleaded after an Emparlarice: But the Court said, That this was the old Courfe, and a Special Emparlarice is but a Novelty, and every Emparlarice General or Special ousts all Pleas to the Jurisdiction of the Court: Whereupon the Court would advife what Judgment to give. 5 W. & M. See Gro. Car. 366.

No Plea can be to the Jurisdiction of the Court after Emparlarice.

*Non Tenure* is not pleadable after Emparlarice.

Cannot have Oyer after Emparlarice.

A Tender after Emparlarice, is naught.

which cannot be when he emparls. *Lum.* 238.

Defendant may have a Special Emparlarice, paying 2 s.

After a Special Emparlarice, upon a *Clausum fregit*, the Defendant pleads Auncient Demeasn, viz. That A. was seized in Fee, and the Lands were Auncient Demeasn, and so would in-

A Plea to the Jurisdiction of the Court, is not receivable after Emparlarice. 1 Lev. 34.

*Non Tenure* in Part, or in the Whole, is not pleadable after Emparlarice.

The Defendant cannot have Oyer of a Deed, &c. after Emparlarice in another Term. 2 Lev. 190.

A Tender pleaded after Emparlarice, is naught: Because the Plea is That he was always ready to pay.

The Defendant may, paying 2 s. have a Special Emparlarice to plead in Abatement.

# Executory Devise.

Executory Devise, See { Devise.  
Remainder.

Where a particular Estate is limited, and the Inheritance passes out of the Donor: This is a Contingent Remainder. *Plow. Com. 25. a.*

But if the Fee by a Devise be vested in any Person, and to be vested in another, upon a Contingency: This is an Executory Devise. *Raym. 28.*

Where a Contingency is limited to depend upon an Estate of Freehold, capable to support a Remainder:

This shall not be construed to be an Executory Devise, but a Contingent Remainder only. *1 Saund. 388.*

A contingent Executory Estate can be touch'd by a Recovery, for that bars only where there is a Privy in Law, as him in Remainder or Reversion. *Carter 53.* Neither shall it bar the Heir where he doth not claim as Heir by Discent, but only as a Purchaser. *Mich. 9 W. Lloyd & Carew.*

In all Cases of Executory Devises, the Estates descend until the Contingencies happen: As in a Devise to A.

Six Months after the Decease of the Devisor, this Land descends in the mean time. *1 Lutw. 798.*

Where a Contingent Remainder, and where an Executory Devise.

What shall not be an Executory Devise.

A Recovery cannot touch a contingent Executory Estate:

Nor bar an Heir by a Purchase.

In Executory Devises, the Estates descend till the Contingency happens.

Executor.

#

Where there is an Infant, and another Executor of full Age, they may sue by Attorney; but if sued, the Infant must appear by Guardian. *Lev. 290. 300.*

Two Executors, one under Age; one of full Age may prove the Will solely, and it is good, because the other cannot prove it during his Nonage. *1 Lev. 181.*

Lands are devised for Payment of Debts: Goods in the Hands of an Executor shall not be liable, *ibid. 203.* nor otherwise in case of an Administrator.

Where a Man devises Lands to his Executors for the Payment of his Debts, and some of them will not meddle in the Matter: In that Case, he or they of the Executors that will sell, may sell, though the others refuse to join in it. *Stat. H. 8. cap. 11.*

A Man devises Lands to his Executors for the Payment of his Debts. The Payment of the Money to the Vendors, being Devisees and Executors, is a sufficient Discharge to the Vendors, altho' the Vendors do not lay out the Money upon Payment of the Debts; for they only are answerable to the Devisees and Creditors.

Where an Executor is sued, if he plead that there is another Executor not named, he ought to say that he hath administrated. *Lev. 161.*

Where an Executor sues, the Defendant may plead so, without shewing that the other hath administrated, if he cannot tell whether he hath administrated or no. *1 Lev. See 9 Rep. 37. b.*

An Executor cannot waive a Term if he hath accepted of the Executorship. But he shall be charged with the Debt in the *Debet* if he hath Assets, and if he continues the Possession, he shall be charged in the *Debet & Deti-*

Infant and another Executor, how to sue.

How to appear.

Where one Executor is under Age, the others may prove it solely.

Where Lands are devised for the Payment of Debts.

One Devisee may sell where the others refuse.

he or they of the Execu-

*21 H. 8. cap. 4.*

Vendees of Land devised for Payment of Debts. Not bound to see the Debts paid.

Money upon Payment of the Debts.

How an Executor must plead, Another Executor not named.

Otherwise where an Executor sues.

*1 Lev.*

An Executor cannot waive a Term after Acceptance of the Executorship.

How to be charged for the Rent.

net,



net, in respect of the Perception of the Profits, whether he hath Assets or not. 1 Lev. 127, 128. See Title *Debit & Detinet*.

Debt lies against Executors of a Lessee after Assignment.

Privy continues.

Where the Privy of Contract is altered by Assignment, and the Privy of Estate also, no Action lies for Rent.

of the Assignee of the Executor: Nothing remains whereupon to maintain the Action. 3 Lev. 295.

Executors shall be bound by a Decree in Equity.

*Debit & Detinet* for other Part, lies not against Executors.

*bonis propriis* for the *Debit* and *Detinet*, and *de bonis Testatoris* for the *Detinet*. 3 Lev. 74.

Arrears of Rent upon a Lease Parol payable by Executors, as Bonds.

Account lies against Executors of any Guardian or Receiver:

4 & 5 Anne.

Where there are Two Executors, and one prove the Will, the Action must be brought in both their Names.

Two Executors, one an Infant, the other proves the Will, and hath Administration to enable him to sue,

incapable at present by reason of his Infancy. 2 Lev. 240.

Debt for Rent lies against the Executors of a Lessee after Assignment; because the Privy of Contract continues between the Lessee and the Executors of the Lessee. 1 Lev. 127.

In Debt for Rent, adjudged that where the Privy of Contract is altered by the Assignment of the Executor before any Rent due: And also the Privy of Estate by the Assignment.

A Decree in Equity shall bind Executors in *Equali Gradu*, with a Judgment at the Common Law. 3 Lev. 355.

An Executor is not suable in the *Debit* and *Detinet* for Part, and in the *Detinet* for other Part. Because they require several Judgments, (*viz.*)

Arrears for Rent due upon a Lease Parol, is payable by an Executor before Bonds; because it savours of the Realty. 3 Lev. 267. 2 Mod. 4.

An Action of Account lies against the Executors or Administrators of any Guardian, Bailiff, or Receiver per 4 & 5 Anne. See Title Account.

Two Executors of full Age, one proves the Will, the Action must be brought in both their Names. 2 Lev. 240.

Two Executors, one within Age, the other proves the Will, and hath Administration *durante Minori* Estate of the Infant. This is granted only to enable him to sue solely, the other being

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A *Sci' fa'* upon a Judgment in Ejectment, well lies against the Executor of the Defendant in the Judgment, and the Stranger who enters. 3 Lev. 100.

Debt upon a Bond, conditioned to leave his Wife 40 l. The Defendant pleads, That the Obligor made his Will, and made his Wife Executrix, and left Goods to the Value of 100 l. and naught; because he might have Debts upon Judgments, Statutes, &c. 3 Lev. 218.

An Executor sells the Goods, but doth not receive the Money they were sold for, or compounds with a Convertor of the Goods, and takes a Bond for them, but never received any of the Money. Yet adjudged a *Devastavit* in *James Norden & Levett. in B. R.* because it was the same Thing as if he had receiv'd so much Money.

Where an Executor dies before Probate of the Will, the Ecclesiastical Court will grant Administration *cum Testamento annexo*, and not Administration *de Bonis non*, tho' the Executor had administred some Part.

Formerly, if an Executor had wasted Goods, and left an Executor, and died leaving Assets, his Executor should not be chargeable, because it was a Personal Tort. 2 Lev. 116. But this is now altered, by a Statute made 4 & 5 W. & M. cap. 24. sect. 12.

If a *Sci' fa'* be brought against an Executor, to shew Cause why he should not pay a Debt unto the Plaintiff recovered against the Testator; the Executor cannot plead fully administred Generally, but must plead it Specially. Which see in Title *Plene Admini-*

An Executor was sued by several Creditors, and he pleads *Plene Administrait* to all at the same time, and that he hath not Assets, *Preter*, to pay One or Two; and now he moved for Relief. *Curia*, We cannot give it, for he hath made himself liable to all the Debts:

A *Sci' fa'* upon a Judgment in Ejectment, lies against an Executor of the Defendant.

Debt upon a Bond, conditioned to leave his Wife 40 l.

The Wife made Executrix.

What shall be a *Devastavit* in an Executor.

How Administration to be granted, where an Executor dies before Probate.

Executor of an Executor shall not be chargeable with a *Devastavit*.

4 & 5 W. & M. cap. 24. sect. 12.

How an Executor must plead to a *Sci' fa'* upon a Judgment of his Testators.

What an Executor must do, when sued by several Creditors.

But

But he should have pleaded Specially to one Creditor, shewing what Assets he had; or else to have paid him, and pleaded fully administrated.

How Executors shall plead Judgments.

8 Rep. 132, 133. How to plead Bonds, Statutes, Recognizance and Judgments: And how to be replied to. 9 Rep. 109. See *Ibid.* Rep. 299.

Where the Defendant concludes his Plea upon pleading of Two Judgments, and One is naught, the whole Plea is naught.

Judgments: And if one is ill pleaded, the whole is naught. *Mich. 6 W. Rot. 132. B. R.*

Two Executors sued by Original in Case; one Appears; and pleads Judgments, and a Verdict against him.

How the Judgment to be.

9 E. 3. cap. 3.

Obligor makes Oblige his Executor, the Executor brings Debt against the Heir.

Obligor made Executor, is an Extinguishment.

Feme Executrix marries a Debtor.

A Feme Executrix takes an Obligor to Husband, who died; this was no Release in Law. *Ibidem.*

In what Cases, and how Judgments shall be pleaded by Executors and the Pleas and Replications good.

An Executor pleaded Two Judgments against the Testator, and that he had but 5 l. Assets, one of the Judgments was ill pleaded: And the Plaintiff demurs. *Curia*, The Defendant hath concluded upon both the

Two Executors sued by Original in the Common Pleas upon an Assumpsit of the Testator; one of them appears upon the Original, and pleads Judgments, and upon the Tryal, Verdict was found against him. And the Judgment was entred against both the Executors for the Damages and Costs, and held that altho' the Defendant did not come in by Summons as in Debt, yet it was within the Statute of 9 Ed. 3. cap. 3. *Dyer 210.*

The Obligor makes the Oblige his Executor, and the Executor brings Debt upon his Bond against the Heir of the Obligor: And held, that the Action well lies. *Trin. 35 Car. 2. B. R.*

If the Oblige makes the Obligor his Executor, this being the Obligor's own Act, is a Release in Law of the Debt. 8 Rep. 136. a.

A Feme Executrix takes a Debtor to Husband; this is no Release in Law, because it is in *Auter Droit*. 8 Rep. 136. a.



An Executor releases all Actions, Suits, and Demands; this extends only to Demands in his own Right, and not to such as he hath as Executor. *Show. Rep. 153, 155.*

An Executor may sue for Goods before he hath Possession of them. *Rep. 135. b.*

An Executor shall be answerable for the King's Money received by his Testator. *11 Rep. from 89. to 93.*

Debt upon a Judgment recovered by the Plaintiff, and Counts in the *Debetur*, but not as Executor; but says, as it was in *Retardationem fidelis Executionis Testamenti*. *Curia*, It shall be intended that the Plaintiff recovered as Executor, and Judgment was given for the Plaintiff.

A Judgment is recovered against an Executor, upon which he brings his Writ of Error, and the Judgment affirmed, yet he shall not pay any Costs; because he is Executor, and it is in *Auter Droit*. *Mich. W. & M.*

An Executor brings a Writ of Error, he shall not put in Bail. *Causa supra.*

Where a Man dies Intestate, and a Stranger takes the Goods, and uses them, he makes himself Executor *de son Tort*. *5 Rep. 33. b.*

Where the Defendant takes Goods before the Executor proves the Will, he may be charged as Executor *de son Tort*, for the rightful Executor shall be chargeable no further than comes to his Hands. *5 Rep.*

There may be an Executor *de son Tort* of a Term. *Show. Rep. 242.*

An Executor, or an Executor of his own Wrong, cannot waive a Term of Years of Land, &c. of which the deceased died possessed.

How an Executor's Release shall be construed.

Executor may sue for Goods before Possession.

Executor answerable for the King's Money received by his Testator.

Debt upon a Judgment, and Counts in the *Debetur*, but not as Executor.

How it shall be intended.

An Executor pays no Costs upon a Judgment affirmed.

It is in *Auter Droit*. *Mich.*

He shall not put in Bail upon a Writ of Error.

An Executor *de son Tort*, who.

Where an Executor *de son Tort*, and also a rightful Executor.

to his Hands. *5 Rep.*

Executor *de son Tort* of a Term.

An Executor of his own Wrong cannot waive a Term.



How far Executors, and Administrators of Executors *de son Tort*, shall be chargeable.

30 Car. 2. cap. 7.

Executors and Administrators of Executors or Administrators, who shall waste, shall be liable as his Testator or Intestate was.

Intestate, shall from henceforth be liable and chargeable in the same manner, as his or their Testator or Intestate should

4 & 5 W. & M. cap. 24. sect. 12.

No Judgment, if not Doggetted, shall affect an Executor.

4 & 5 W. & M. cap. 20.

fect any Purchaser or Mortgagee, or have any Preference against Heirs, Executors, or Administrators, in the Administration of their Ancestors or Intestates Estates.

An Action lies for an Executor against a Sheriff for the false Return of a *Fieri fa*.

Verdict, it was moved

Statute, *De bonis asportatis*.

well lay. Williams and Cray. Pas. 7 W.

Plea to an Executor that his Testator was outlawed, naught.

to the King. The Plea was held to be naught, and Plaintiff had his Judgment. 7 W.

The Executors and Administrators of Executors in their own Wrong, shall be liable to pay the Debts of the Testator, in the same manner as their Testator or Intestate would have been if they had been Living; per Stat. 30 Car. 2. cap. 7. 2 Lev. 116.

Also all and every Executor and Executors, Administrator or Administrators, of such Executor or Administrator *de jure*, who shall waste or convert to his own Use, Goods, Chattels, or Estate, of his Testator or

By a Stat. made 4 & 5 W. & M. cap. 20. for Doggetting of Judgments which see in Title Judgment: It is enacted, That no Judgment not Doggetted, as that Act directs, shall effect

An Executor brings an Action against a Sheriff, for a false Return of a *Fieri facias* in the Testator's Life time, and sets forth, That he returned less then he had levied. And after that it was a Tort, and *moritur cum Persona*. And that it is not within the Statute, *De bonis asportatis in vita Testatoris*; but adjudged that the Action

A Man brings Debt upon a Bond as Executor, the Defendant pleads Bar, That the Testator was Outlawed, and so the Debt was forfeited

**Assumpsit against an Executor who pleads a Bond not due. How to be pleaded, and how to reply to it.**

**1 Lev. 57.**

**After Appearance, where the Action is by Bill, one of the Plaintiff's Executors make Default, the other Plaintiff shall give him a Rule to come in and join with him, or be severed; and if he shall make Default, he shall be severed, and the other Plaintiff may sue solely. But if the Action be by Original, then there must go out a Writ of Summons and Severance.**

**How an Executor shall assent to a Devise of a Term. 1 Lev. 25.**

**Where a Man hath a Term as Executor, he may grant it away as he pleases; but a Devise of it is void, and it shall go to the Executors and the Devisees. 2 Plow. 125. b. 526.**

**But, by the Statute 17 Car. 2.**

**it is enacted, That where any Judgment after a Verdict shall be had by or in the Name of any Executor or Administrator, that in such Case an Administrator, De bonis non, may sue forth a *Sci' fa'*, and take Execution upon such Judgment. Note, This Statute doth not extend to Judgments by Confession or *Nil dicit*, but only to Judgments after Verdicts.**

**No Action shall be brought against an Executor to answer Damages out of his own Estate, unless there be some Memorandum, or Note thereof in Writing, and signed by the Party, to be charged therewith, or some other Person by him lawfully authorized.**

**Stat. of Frauds and Perjuries. 29 Car. 2. cap. 3.**

**A Man makes his Will and dies, the Ordinary grants Administration before the Will is proved. The Administrator sells the Goods. Then the Executor proves the Will, and brings Detinue against the Vendee, and had**

**1 Plow. from 276. to 289.**

**See Title Wills.**

**Executors**

**How a Bond not due to be pleaded, and replied to.**

**Where and how one Plaintiff's Executor may summon and sever another.**

**How an Executor shall assent to a Devise.**

**An Executor may sell a Term, but cannot devise it.**

**An Administrator, De bonis non, may sue forth a *Sci' fa'* on a Judgment after a Verdict, recovered by an Executor or Administrator.**

**17 Car. 2. cap. 8.**

**Where an Executor may be charged out of his own Estate.**

**A Man makes his Will and dies, Administration is granted. The Administrator sells the Goods. Then the Executor proves the Will.**

**29 Car. 2. cap. 3.**

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**29 Car. 2. cap. 3.**

**A Man makes his Will and dies, Administration is granted. The Administrator sells the Goods. Then the Executor proves the Will.**

**29 Car. 2. cap. 3.**

What Executors may do before Probate.

because the Probate must be brought into Court before the Defendant is bound to plead. *Ibidem* 208. b. 281. 5 Rep. 28. 9 Rep. 38. a.

A Judgment may be pleaded by an Executor, against a Statute or Recognizance.

Where a Matter is joint and several, either the Executors of the Deceased, or the Survivor, may be sued.

vivor or the Executors of the Deceased. 1 Mod. 195.

What shall become of the Residue undisposed of.

him any Legacy, nor make any Disposition of the Residue of his Personal Estate after Debts and Legacies paid and discharged. This Residue shall not go to the Executor, but shall be distributed amongst the Relations of the Testator, by an Administration to be made for that Purpose. *Gray's Case* upon an Appeal. 4 *Anne Regina*.

Executors may execute, and be sued, or Release, or Sell, before Probate; but cannot sue before Probate.

A Judgment in Debt in a Court of Record, is preferable by an Executor in pleading before a Statute or Recognizance. 4 Rep. 59. b. 60. 5 Rep. 28, 29.

The Testator and one of his Executors acknowledged a Statute; Debt upon Bond is brought against the Executors, who plead this Statute, and held that this Statute being Joint and Several, he may sue either the Sur-

A Man makes his Will, and makes an Executor, and gives to him Mourning; nay, he doth not give



# Endictment,

First Part 264.  
 Endictment, See { Counsel and Counsellors.  
 Felony.  
 Libel.

**An Endictment**, is an Inquisition taken and made by twelve Men, at the least, thereunto sworn, whereby they do find and present, That such a Person, of such a Place, in such a County, of such a Degree, hath committed such a Treason, Murder, Burglary, Robbery, Felony, Tretpass, or other Offence, against the Peace of the King, his Crown and Dignity, &c. Pulton 169. b.

An Endictment, *Quid.*

Where an Endictment is drawn upon a Statute, it ought to pursue the Words of the Statute if it be a Private Act, *Aliter* if it be a General Act; and it is safe to conclude, *Contra formam Statuti* generally, without saying *Statuti*, or *Statutorum*: For if it happens to be upon one Statute, it is then right; so also if it be upon two or more Statutes.

How Endictments upon Statutes ought to be, and how to conclude.

If any Clerk of Assize, Clerk of the Peace, or other Person whatsoever, shall demand or take more than 2 s. for drawing of any Bill of Endictment against a Felon, he shall forfeit 1. and Costs of Suit, *per Stat. 10 & 11 W. 3. cap. 23. sect. 7 & 8.*

Clerk of Assize to take but 2 s. for an Endictment.

The Penalty.

10 & 11 W. 3. cap. 23. sect. 7 & 8.

That if any Clerk of the Assize, Clerk of the Peace, Clerk of the Crown, Clerk of the Endictments, or other proper Officer, or their Clerks or Deputies, shall draw any Bill defective, they shall draw new Bills without Fee, or forfeit 5 l. with Costs. *Stat. 10 & 11 W. 3. cap. 23.*

If any defective Bill.

The Penalty.

10 & 11 W. 3. cap. 23.

The Court will not oftentimes quash an Indictment, but order Defendants to plead or demur.

ment, if they desire it; and do oftentimes order them to appear and plead, or demur to it as they shall think fit; for the Maintenance of Endictments is for the Good of the Nation, and the King is principally concerned in it.

How Endictments ought to express a Mortal Wound given.

an Endictment ought certainly to express in what Part the Mortal Wound is, and the Profundity and Latitude of it, that it may appear to the Court to be Mortal. 4 Rep. 40. b.

Endictment of Murder wanted the Word *Percussit*.

a Bullet out of a Gun through the Body of the Deceased. 5 Rep. 120, to 123.

Where there are some superfluous Words in an Endictment of Murder.

Several Exceptions to an Endictment on the Coroner's Inquest.

In what Cases the Accessory cannot be arraigned.

raigned, 4 Rep. 43. b. For it doth not appear by Judgment of the Law that he was Principal; and the Acceptance of the Pardon, or Prayer of the Clergy, is an Argument, but no Judgment in Law, that he is guilty. But if the Principal be pardoned after the Attainder, or hath his Clergy allowed, there the Accessory shall be arraigned: Because it appears judicially that he was Principal. 4 Rep. 43. b. 44. a.

How it is where the Principal is pardoned, or hath his Clergy.

raigned: Because it appears judicially that he was Principal. 4 Rep. 43. b. 44. a.

Although Exceptions be taken against an Endictment, to the Intent that the Court should quash it, yet the Court will grant Time to the King's Council to maintain the Endictment.

An Endictment that says, *Quod dedimus unam Plagam mortalem circiter Peritum*, is insufficient and incertain, for it may be in the Arm or Belly; and

An Endictment of Murder, with several Objections to it, and all overruled but one, which was want of the Word *Percussit*, with the shooting of

An Endictment set forth, That *Percussit in sinistra parte Ventris circa Umbilicum*; and the Words *Circa Umbilicum* were held superfluous, and the other Words good. 4 Rep. 41.

See several Exceptions to an Endictment, upon an Inquisition taken before the Coroner for a Murder with the Answers thereunto. 4 Rep. 41, 42.

Where there is Principal and Accessory, and the Principal is pardoned, or hath his Clergy before Judgment, the Accessory cannot be arraigned.

For it doth not appear by Judgment of the Law, that he is guilty. But if the Principal be pardoned after the Attainder, or hath his Clergy allowed, there the Accessory shall be arraigned.

Upon an insufficient Endictment of Felony, there is a Judgment that the Party *Suspendatur per Collum*, and is so attainted, which is the Judgment and End that the Law hath appointed for the Felony; there he cannot be *superseits* endicted and arraigned, until this Judgment be revers'd by Error: But when the Offendor is discharged upon an insufficient Endictment, there the Law hath not had its End, nor was the Life of the Party ever put in Jeopardy. 4 Rep. 45. a.

An Endictment at the Sessions, upon the Statute of 8 H. 6. cap. 9. was quash'd for Misrecital of the Statute; and also for saying, That the Sessions was held *Die Martis, & Die Mercurii, &c.* For the Record ought to mention the Sessions to be held at a Day certain, *viz.* the first Day thereof, &c. 4 Rep. 48. a.

Note, It is not Policy to recite a Publick Statute, for the Recital is not necessary, and the Misrecital is fatal; and therefore the sure Way is only to say, *Contra formam Statuti* &c. 4 Rep. 48.

In all Cases, the Endictment for a Fact done, ought to be laid in the County where the Fact was done; for it shall be intended, That the best Conuzance of the Fact may be had there, and consequently the fairest Tryal.

The Parish in which the Fact was done for which the Party is endicted, and the Place of the Defendant's Abode, ought to be named in the Endictment, that the Party endicted may be the plainlier described and outlawed, if he do not appear.

The Caption of an Endictment may be amended the same Term it is brought into Court, by the Clerk of the Peace: But the next Term after it cannot be amended.

The Want of *Vi & Armis* in an Endictment of Forgery, is fatal, 2 Lev.

Where the Party may be endicted again, when the first was insufficient.

An Endictment quash'd for misreciting of a Stat. of 8 H. 6. cap. 9.

The Sessions must be said to be held at a Day certain,

No Policy to recite a Publick Statute.

Ought always to be laid in the County where the Fact was done.

The Parish and Place of the Defendant's Abode, ought to be named.

The Parish and Place of the Defendant's Abode, ought to be named.

The Caption may be amended the same Term, not afterwards.

The want of *Vi & Armis*, is fatal.



# **Indictment.**

**The Want of the Words**  
*Ligeancie sue, fatal.*

**What Process issues out**  
**upon Indictments.**

One poisoned instead of  
another, it's Murder.  
the Wife recovered; this  
is Murder, though there was no Inten-  
tion to murder the Child.

**A Judgment of High-Treason was**  
**revers'd, for want of the Words** *Ligean-*  
*cie sue* **in the Indictment.** 3 Lev.  
396.

**Upon an Indictment preferr'd a-**  
**gainst one in the King's Bench in Mid-**  
**dlesex, there doth issue out a Venire**  
**Facias; and if the Party doth not appear thereupon, then a Ca-**  
**pias, to force him to appear to the Indictment.**

**Ratsbane was bought by the**  
**Husband to poison the Wife, with**  
**which the Child was poisoned, and**  
**which the Child was poisoned, and**  
**is Murder, though there was no Inten-**  
**tion to murder the Child.** 2 Plow. 473, to 476.

Ought always to be laid  
in the County where the  
Fact was done.

the Place may be had there, and consequently the

The Parish and Place of  
the Defendant's Abode,  
ought to be named.

be the Plaintiff's de-

The Caption may be so  
inserted, and the same Term  
not afterwards.

The want of M. C. is  
fatal.

D. B. 2.

the Indictment for a  
Fact ought to be laid in the  
County where the Fact was done;  
and the Parish in which the Fact was  
done ought to be named in the In-

The Parish in which the Fact was  
done ought to be named in the In-  
dictment, and the Place of the De-  
fendant's Abode ought to be named in the In-

the Party indicted may be the Plaintiff's de-  
fendant, if he do not appear  
and answer, if he do not appear  
and answer, if he do not appear

the want of M. C. is  
fatal.

**Exco-**

# Excommungement,

Excommungement, See { Abatement.  
 { Crpal.

**Excommungement**, is where a Man is excommunicated in the Spi-ritual Court, and then he is disabled to sue any Action at Law until he be absolved; and the Bishop must certifie the Excommunication into Chancery. whereupon goes a Writ De Excommunicato Capiendo Rei' in the King's Bench.

What Excommungement is.

If in a Writ De Excommunicato Capiendo, the Party excommunicated hath not a sufficient Addition, according to the 1 H. 5. cap. 5. he shall not incur the Penalties of the Act of Eliz. cap. 23.

The Party excommunicated must have his true Addition.

1 H. 5. rap. 5.

3 Eliz. rap. 23.

D d 4

Expo=

# Exposition,

First Part 272.  
**Exposition of Deeds, Deed.**  
**Words, &c. See Proviso.**  
**Uses.**  
**Words.**

**I**n the Exposition of Deeds, the Words shall always be construed, **First, According to the Intent of the Parties, and not otherwise.**

2dly, That the Deed shall never be void, when the Words can be applied to any Intent.

3dly, That the Words shall be taken most beneficially for the Person who takes by them. *1 Plow. 160. b. 161.*

Particular Words.  
 General Words.

An *Inuendo*, what.

who was incertainly named before. *4 Rep. 17. b.*

*Pro*, when Satisfaction,  
 when a Condition.

When the Thing granted is Executory.

or some other Thing, for which there is no other Remedy but the stopping of the Thing granted. An Annuity is granted *pro Concilio, &c.* The Condition is not precedent, and need not to be averr'd to be performed when the Annuity is demanded. *Hob. 41.*

*Non Obstante.*

*Sciens.*

*Non Obstante*, See Title *Non Obstante.*

*Scetens* not traversable, *Vide Title Traverse.*

*Scilicet*



## Exposition.

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**Scilicet**, repugnant to the Matter precedent, is void, as well after a Demurrer as a Verdict.

**Scilicet**, where void.

**So that**, the Meaning of those Words. 2 Lev. 150.

So that.

**Thence**, the Signification of it. 2 Lev. 241, 242.

Thence.

**Then, and when**; these Words are Demonstration of Time. 3 Rep. 21. a. b.

Then, and when.

**Et Sic**. 2 Lev. 140, 141.

Et Sic.

**Relation**, not to the next Antecedent, but what is most agreeable to the Matter.

Relation.

**Quando**; the Meaning of it in the Words of a Plea, *Veni & Defendi Vim & Injuriam quando*, &c. Co. Litt. 127. b. *Antea Titulo Abatement.*

Quando.

**Where** the Issue taken goes to the Point of the Writ, or Action, there *Modo & Forma* are but Words of Form: But when a Collateral Point in Pleading is travers'd, as if a Feoffment be pleaded by Deed, and it is travers'd *Abque hoc quod Feoffment modo & forma*; here these Words are so essential, that the Jury cannot find a Feoffment without a Deed. Co. Litt. 281. b.

*Antea Titulo*

*Modo & Forma*, where

Essential, where Form.

**Where** Words are dubious, they ought to be taken in that Sense, that no Wrong shall be done. 2 Lev. 155.

Dubious Words.

**General Words** in a Release restrained by the particular Occasion thereof. 3 Lev. 273.

General Words in a Release.

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General Words in a Release.

## Election.

# Election,

**Election, See Title First Part 274. Werrist.**

**Election, Quid,**

**or do one Thing or another, which he pleaseth.**

Where a Man may bring Waste or Trover.

**Plaintiff's Election to bring an Action of Waste, or else an Action of Trover and Conversion for the Trees: For though it be most for his Advantage to bring an Action of Waste, yet he may wave that Advantage if he please, for none is prejudiced thereby but himself; but he cannot bring both.**

Where several Damages found against several Trespasors, how the Judgment shall be.

**Plaintiff having charged them jointly with all the entire Matter, if One commits the Battery, the Other the Imprisonment, and the Third takes the Goods, all at one Time; all are guilty of the Whole, and shall be all charged with the whole Damages; and if several Damages had been given, the Plaintiff should have but one of them at his Election. 3 Lev. 324. Vide Title Damages.**

Upon Grants or Demises of Estates in the Disjunctive.

Or an Election to be made.

**Election, is where a Man is left to his own free Choice, to take**

**Where Waste is committed by cutting down of Trees, and carrying them away from thence; it is at the**

**Where Damages are found severally against Three several Trespasors, the Plaintiff shall have but one of them, and may make his Election de Melioribus Dampnis: For the**

**Upon Grants and Demises of Estates, where the Thing granted is in the Disjunctive, or an Election to be made: See for this Matter fully in the 2 Rep. from 35. to 37. in Sir Rowland Heyward's Case, and in the Lord Cromwell's Case, from 70. to 82.**

**For Elections, See the Case of Fines, 3 Rep. 84, 85, &c.**

# Election.

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Although a Lessee enters generally, yet he may elect to take by Deed, or Bargain and Sale. 2 Rep. 37.

Where a Thing may be void, or not, at the Election of him whom it concerns. Hob. 166.

Where the Election creates the Interest, nothing passes till Election; and where no Election can be made, no Interest will arise. Hob. 174.

An Act becoming void, will determine an Election. Hob. 174.

A general Entry, is no Determination of an Election.

Where a Thing may be void, or not, at Election.

Where nothing passes till Election.

What will determine an Election.

What is an Election, and what not.

How Elections to be pleaded.

Election, and not demand.

Recital in a Condition of a Bond is an Election.

None shall say a Judgment is void out any other Time than in a Term.

A Jury not stopped to find the Truth in a special Verdict.

Parties and Privies bound by Election.

Condition to pay all the Arises in a Will.

Will: Estoppel.

One may plead, No Election.



# Estoppel,

## See First Part 276.

**An Estoppel, &c.**  
Speak against his own  
say the Truth.

**What is an Estoppel,  
and what not.**

**How Estoppels to be  
pleaded.**

**Estoppel, and not demand**

**Recital in a Condition  
of a Bond is an Estoppel.**

**be permitted to plead any**

**None shall say, A Judicial  
Writ was sued out any  
other Time than in a  
Term.**

**A Jury not estopped to  
find the Truth in a Special  
Verdict.**

**Parties and Privies bound  
by Estoppels.**

**Condition to pay all Le-  
gacies in a Will.**

**Cannot plead, No Will :**

**But may plead, No Le-  
gacies.**

**Estoppel, is where a Man is con-  
cluded and forbidden by Law to**

**A General Recital is no Estoppel,  
but a Recital of a Particular Fact is,  
Show. Rep. 59.**

**Estoppels ought to be pleaded; and  
in Pleading, the Party ought to con-  
clude his Plea, and rely upon his  
Judgment Si Actio. 4 Rep. 53. a.**

**A Recital in a Condition of an  
Obligation is an Estoppel; which be  
that made the Obligation shall not, in  
an Action to be brought thereupon,**

**be permitted to plead any Thing to the contrary. Dy. 196.**

**The Defendant shall not be admit-  
ted to say, That a Judicial Writ was  
sued out at any other Time than in  
Term. Lutw. 33.**

**A Jury are not estopped to find the  
Truth in a Special Verdict. Lutw.  
510, 1644.**

**All Parties and Privies in Estate  
and Interest, are bound by Estoppels.  
4 Rep. 53. a.**

**The Condition of a Bond, was to  
pay all such Legacies as J. S. had be-  
queathed by his Will. Here it was  
held, That the Defendant could not  
plead, J. S. made no Will; but he  
might plead, That J. S. gave no Le-  
gacies by his Will. Moore 555.**

**Although**

Although Estoppels conclude the Parties to say the Truth, yet the Jurors are not concluded thereby; because they are sworn *ad Veritatem de & super Premissis dicendam*. 4 Rep. 53.

Though the Parties are concluded by Estoppels, the Jurors are not.

A Man takes a Lease for Years of his own Land, this is no Conclusion, but during the Term. 4 Rep. 54. 4.

A Man takes a Lease of his own Land.

If one enter into an Obligation by the Title of an Esquire, whereas in Truth he is a Knight: If an Action be brought against him upon this Obligation, and he is named an Esquire, he shall be estopped to plead in Abatement to the Writ or Bill, that he was not an Esquire, but a Knight, at the Time that he enter'd into the Obligation.

Where a Knight is bound by the Name of an Esquire.

An Estoppel shall bind only the Heir who claims the Right of him to whom the Estoppel was. 8 Rep. 53. b.

What Heir an Estoppel shall bind.

A Demise by Indenture of a Term, Habendum from the Expiration of another Term therein recited, when really there was no such Term in esse:

Recital of a Term where there is none, is no Estoppel.

This is no Estoppel to the Lessor or Lessee, but the Lessee may presently enter, and the Lessor may grant the Reversion. Vaugh.

Escrow, Vide Deeds.

Extin=

Although Extinguishment concludes the Parties to lay the Truth, yet the Parties are not concluded thereby, but the Parties are not.

# Extinguishment.

Extinguishment, See { First Part 278.  
Appurtenant.  
Suspension.  
Executors.  
Unity of Possession.

**Extinguishment, Quid.** Extinguishment, is where any Kent or Service is going out of any Land, and he who hath the Kent or Services purchases the Land, whereby he hath as good an Estate in the Land, as he hath in the Kent, then the Kent is extinct: So also where the Debtee makes the Debtor his Executor.

Two are bound jointly and severally in a Bond, the Obligees made the Wife of one of the Obligors his Executrix, who administered; then her Husband made her his Executrix, and died, leaving Assets to pay the Debt; then the Executrix died, and Administration of the Goods of the Obligees not administered by his Executrix (the Obligor's Wife) was granted to the Plaintiff, who brought his Action against the surviving Obligor, and adjudged that it would not lie. First, Upon the Obligees making the Wife of one of the Obligors his Executrix, the Action was at least suspended: And then the Rule is, That a Personal Action once suspended, is extinct. (Note, This Rule hath an Exception: For if a Feme-Executrix takes the Debtor to Husband, this is but a Suspension during the Coverture: 8 R. 136.) Secondly,

When the Obligor made the Executrix of the Obligees his Executrix, and left Assets, the Debt was presently satisfied by way of Retainer. Hob. 10, Moore 855. Brownl. 76. Cro. Jac. 271, Telv. 196.

Debt satisfied by Retainer.



**No Extinguishment of Rent shall be, but where the Lessor enters injuriously, and against the Lessee's Consent: Not where all is done by Agreement.** *Lev. 143.*

**A Release of Common in one Acre, is an Extinguishment of the whole Common.** *Show. Rep. 350.*

**A Perpetual Union of the Tenancy to the Rent, or Rent to the Tenancy, is an Extinguishment of the Rent.** *Vaugh. 39.*

**If a Man be seized of a Rent-Charge in Fee, and grants it to another and his Heirs, and the Tenant assigns, such Grantor is without Remedy for the Rent Arrears before his Grant, for Distraint he cannot, and other Remedy he hath not.**

**What shall be an Extinguishment of Rent.**

**A Release of Common in one Acre, extinguishes the Whole.**

**Where Union is an Extinguishment.**

**Where, upon a Grant of a Rent, there is no Remedy for the Arrears.**

**Where seized Tenant, and more.**

**Where Tenant at Will, and the Will is determined.**

**Corn: But if the Lessee himself determines the Will before the time 168. a. 6.**

**Where the Wife and not the Husband's Executors, shall have it.**

**Tors of the Husband: Because the Husband did not sow it.**

**A Copyholder sows, and Landlord, how to be.**

**Severance: Here the Wife shall have the Corn, because the Husband sowed it with the Land to the Wife, as annexed to the Fee, which the Law gave him. *Key's case.***

**Emble**

# Emblements.

What Emblements are.

Emblements, are the **Profits of the Land** which hath been sowed; and in some Cases, he which sowed them shall have them, and in some not: As if Tenant for Life sow, and dies, his Executors shall have the Emblements, and not be in Reversion. But if Tenant for Years sow, and before Severance his Lease expires, he in Reversion shall take the Land as he finds it, with the Corn upon it; but he must first enter.

And who shall pay them.

Where a Woman, seized of Land during her Widowhood, sows the Land, and before Severance marries, he in Reversion shall have the Corn.

Where seized *Durante Viduitate*, sows, and marries.

it being her own Fault to determine her own Estate by her own Act.

Where Tenant at Will sows, and the Will is determined.

Corn: But if the Lessee himself determines the Will before Severance, there he shall not have it. See 5 R. 116. and Terms of the Law 168. a, b.

Where the Wife, and not the Husband's Executors, shall have it.

tors of the Husband: Because the Husband did not sow it.

A Copyholder sows, and surrenders, how to be.

Severance: Here the Wife shall have the Corn, because the Husband passed it with the Land to the Wife, as annex'd to the Land; and by this, the Privilege which the Law gave him that sowed it, is taken away by the Surrender. Roll's Abr. 727.

Where a Woman, seized of Land during her Widowhood, sows the Land, and before Severance marries, he in Reversion shall have the Corn.

Where a Man leaseth Land at Will, and the Lessee sows the Land, and then the Lessor determines his Will, yet the Lessee shall have the Corn.

If a Feme-Covert sows Land and marries, and her Husband dies before Severance: Here the Feme shall have the Corn, and not the Executors of the Husband: Because the Husband did not sow it.

Baron, seized of a Copyhold in Fee, sows it, and then surrenders to the Use of his Wife, who is admitted afterwards the Husband dies before

A Man devises his Land to his eldest Son and his Heirs, and takes no Notice of the Corn upon it, who shall have the Corn upon it. *Per Saunders Ch. Justice*;

Where the Corn shall go with the Land, and where not.

Where a Man seized of Land sows it, and dies, the Corn goes to the Executor, and not to the Heir: But where a Man devises his Lands sown, and says nothing of the Corn, the Corn shall go with the Land to the Devisee.

But where the Devise of the Land is to the Son and Heir, which is void, and he is in by Discent; then whether the Devise is void for the Land, and good for the Corn, or void for both: There he was of Opinion, That it should be good for the Land.

Where void as to the Land, and good as to the Corn.

The Executor shall have the Corn sown by the Ancestor, and not the Heir. *Hob. 132.*

The Executor, and not the Heir, shall have the Corn.

The Law gives to the Party whose Right it is, free Ingress, Egress and Regress, to enter, cut down, and carry away the Corn. *Co. Litt. 36. a.*

The Law gives a Liberty to carry off the Corn.

Tenant at Sufferance sows the Land, and afterwards a Judgment is recorded against him, and the Corn

Tenant at Sufferance cannot cut Corn.

seized thereupon, and sold by the Sheriff; then the Landlord enters, and afterwards the Sheriff cuts the Corn and carries it away: Trespass lies for the Landlord against the Sheriff and his Officers. *Sir John Banks his Case, in 36 Ca. 2.*



# Error.

Error, See

First Part 279.

Certiorari.

Abatement.

Guardian.

Judges.

A Writ of Error, what it is.

**E**rror, is the Name of a Writ which issues out of Chancery, and lies where Judgment is given in any Court of Record, and is returnable only in the King's Bench: And if upon the Transcript of the Record into the King's Bench, it appears to the Court that there is Error in the Record or Process, or giving of the Judgment, then the Judgment is reversed; but if there be none, then it is affirmed with double Costs.

How and when Execution shall be stayed upon bringing of a Writ of Error.

3 Jac. 1. ca. 8.

13 Car. 2. ca. 2. sess. 2. § 8.

16 & 17 Car. 2. Ca. 8.

How an Assignment of General Errors to be.

the Declaration is not sufficient in Law; and also that Judgment was given for the Plaintiff, where it ought to have been given for the Defendant.

You shall not assign that for Error, which you might have pleaded to the Action.

shall not assign for Error, That he was Knight only, and not Baronet: So if a Man pleads by a wrong Name, and there is

**I**n what Cases Execution shall not be stayed upon the bringing of Writ of Error, until a Recognizance entered into; and in what Cases they may have a Superseas without it. See the Statute of 3 Jac. 1. ca. 8. and 13 Car. 2. ca. 2. Session 2. § 8. and 16 & 17 Car. 2. ca. 8.

**T**he assigning of General Errors upon a Writ of Error to reverse a Judgment, is to say generally, That

**Y**ou shall not Assign that for Error which you might have pleaded to the Action; as for the Purpose, where a Man is sued as Knight and Baronet, you

Judgment

Judgment against him upon a Verdict, the Sheriff may well take him in Execution; but if Judgment were by Default, he cannot. *Rolls Rep.* 50. 88.

Where an Action is brought against a Feme Sole, and she marries, pending the Action: This does not abate the Action, but the Plaintiff may proceed against her till Judgment, and take her in Execution by the Name by which she is sued.

So where a Feme Sole marries, pending the Action.

Where a Writ of Error is brought upon a Judgment given after a Verdict, and the Plaintiff in the Errors puts in Bail as is required by the Statute of 3 Jac. ca. 8. and it is insufficient; and thereupon a Rule is given by the Clerk of the Errors to justify those put in, within Four Days.

Where the Plaintiff puts in insufficient Bail upon a Writ of Error.

3 Jac. 1, ca. 8.

If the Plaintiff doth not justify the Bail, the Chief Justice will order Execution upon the Judgment, with a *Non obstante* to the Writ of Error and *Supersedeas*: But the Writ of Error remains still, and the Plaintiff in the Errors may proceed thereupon: It is only the *Supersedeas* to the Execution which is taken away. *Mich. 9 W. B. R.*

put in better Bail, or If the Plaintiff doth

If not justified, Execution will go.

But the Writ of Error remains still.

If a Writ of Error be brought to reverse a Judgment in an inferior Court, and the Record is not certified into this Court within Four Days after the End of the Term wherein the Writ was returnable: Then upon a Certificate thereof by the Clerk who receives those Returns, that no Return is made; yet Execution cannot be sued upon this Judgment, until there comes a Writ *De Executione Judicii* from the Chancery commanding it to be done: For the Writ of Error was a *Supersedeas* to the Execution, until the Writ *De Executione Judicii* was sued out, and allowed.

Where a Writ *de Executione Judicii* lies for the not certifying of a Writ of Error.

Then upon a Certificate thereof by the Clerk who receives those Returns, that no Return is made; yet Execution cannot be sued upon this Judgment, until there comes a Writ *De Executione Judicii* from the Chancery commanding it to be done: For the Writ of Error was a *Supersedeas* to the Execution, until the Writ *De Executione Judicii* was sued out, and allowed.

Executors pay no Costs.

A Judgment is recovered against an Executor, upon which he brings a Writ of Error, and the Judgment is affirmed; yet he shall not pay Costs, because he is Executor and it is in *Auter Droit*. *Mich. 3 W. & M. B. R.*

Neither shall he put in Bail.

An Executor brings a Writ of Error; he shall not put in Bail. *Causa supra. 5 W. & M. 16 & 17 Ca. 2.*

Re 2

A Writ

Writ of Error lies in the *King's Bench* here, to reverse a Judgment given in *Ireland*.

An Ejectment was brought in the *Common Pleas* in *Ireland*, and a Judgment thereupon; and a Writ of Error brought in the *King's Bench* in *Ireland*, and there affirmed; and afterwards a Writ of Error was brought thereupon, returnable in the Court of *King's Bench* in *England*, and the Judgment affirmed here with Costs also: And an Execution was taken out in *England*, as well for the Damages and Costs of the first Judgment in *Ireland*, as also for the Costs upon the *Affirmetur* there, and also for the Costs of the *Affirmetur* here in *England*; and it was adjudged by the Court to be a void Execution: And a Writ of Restitution was thereupon awarded, for that the Record must be transmitted back to *Ireland*, to have Execution done there which cannot be done by our Court here. *Mich. 11 W. B. R.*

And also in the *King's Bench* here.

And Execution taken here for all the Damages and Costs.

A void Execution.

How Execution to be.

How it is where a Writ of Error is quash'd.

Court, upon producing of the Writ and Transcript into Court for such Variance, will quash the Writ of Error; but the *Cassetur breve* must be entered upon Record, and there must be Prayer of a new Writ of Error, if the Plaintiff in the Error

4 & 5 *Anna.*

Costs shall be paid.

In what Cases a Writ of Error, *Quod coram vobis refidet*, lies.

cess; which Writ is allowed in Court, without Bail; for which, there is paid to the Secondary a Fee of 2 s. for the Allowance of it: And upon a Motion at the Side-Bar, the Court

## Error.

A Writ of Error lies in the *King's Bench* in *England*, to reverse a Judgment given in *Ireland* in the *King's Bench* there.

which cannot be done by our Court here. *Mich. 11 W. B. R.*

If a Writ of Error be wrong directed, or it appears that it varies from the Record, when certified; the Court, upon producing of the Writ and Transcript into Court for such Variance, will quash the Writ of Error; but the *Cassetur breve* must be entered upon Record, and there must be Prayer of a new Writ of Error, if the Plaintiff in the Error thinks fit to sue it out. *Hill. 9 W.* But by the 4 & 5 *Anna.*, the Defendant in Errors shall have his Costs as if Judgment had been affirmed, and to be recovered in the same manner. 4 & 5 *Anna.*

Error, *Quod coram vobis refidet*, lies in the *King's Bench* in these Three Cases, viz. For Errors in Fact, as In-

fancy, false Latin, and Errors in Procedure; which Writ is allowed in Court, without Bail; for which, there is paid to the Secondary a Fee of 2 s. for the Allowance of it: And upon a Motion at the Side-Bar, the Court



have granted a Superseas; because none of the Statutes which oblige the Plaintiffs in Error to put in Bail, extend to this Writ of Error.

**III Cases of Process and Delay** which were for the Advantage of the Party, he shall not be admitted to assign this for Error: But where a Judgment is imperfect for want of a *Misericordia*, or a *Capiatur*, it is an Error not amendable. 8 Rep. 59. a. But *Capiaturs*, except upon a Judgment upon *Non est factum*, are taken away by a late Statute made *tempore*, W. & M. See Title Judgment.

What Errors may be assigned in favour of the Plaintiff, and what not.

Upon a Writ of Error out of the Common Pleas, a Variance between the Plea Roll and *Nisi Prius* Record was assigned, and a *Certiorari* sued out to certify the *Nisi Prius* Record; upon which there was a Return, That there was no Record of *Nisi Prius* filed: But notwithstanding, Judgment was affirmed; because the Error is contrary to the Record certified, which the Judge, named in the *Postea* before whom the Cause was tried, had certified to the Court in *hec Verba*. 5 W. & M. B. R.

Errors contrary to the Record cannot be assigned.

**20 Fine, Common Recovery or Judgment**, in any Real or Personal Action, shall be revers'd, or avoided by any Error or Defect therein, unless the Writ of Error be brought, and prosecuted with Effect, within 20 Years after such Fine levied, or Recovery suffered, or Judgment signed, or entered of Record. Note, There is a Provision for *Infants*, *Non Compos*, &c. Stat. 10 & 11 W. cap. 14.

No Writ of Error to be brought above 20 Years after the Judgment, Fine, or Recovery.

The Bail cannot join with the Principal in a Writ of Error to reverse a Judgment given against the Principal: For the Principal must reverse the Judgment alone, if it be erroneous, because it was only given against him, and not against his Bail.

Principal and Bail cannot join together in a Writ of Error.

There is no Bail to be put in upon the bringing of a Writ of Error, upon a Judgment in an Action of Debt upon a Bond conditioned for performance of Covenants, or upon a Bail-Bond: But where Bail is required to a Writ of Error upon

No Bail upon a Judgment on Bond for Performance of Covenants, or a Bail-Bond.

Judgment in an Action of Debt upon a Bond, the Bond must

be for the Payment of Money only : And that it is by the very Words of the Statute.

The Condition must be upon Record, and how it must be.

Condition ; there, upon a Writ of Error brought, the Plaintiff in Errors must put in Bail : Because it doth not appear to the Court upon the Record, That the Condition was for Performance of Covenants. Trin. 13 W. B. R.

The Allowance of a Writ of Error without Bail, is no Superfedeas.

Execution, for the Plaintiff may sue out his Execution notwithstanding : But the Writ of Error is still in being, until there is a *Nolle prosequi* entered, or Judgment be affirmed or reversed.

Writs of Error issue out of the Chancery, and where returnable.

upon Judgments given in this Court which are returnable in the Exchequer Chamber ; and also upon Judgments in the Court of Exchequer, the Sheriff's Court of London, and the Cinque-Ports) and are directed to Courts of Record, to certify into this Court the Record and Process of the Judgment *omnilus ea tangentibus* : But Writs of false Judgment issue like

Writs of false Judgment returnable only in Com. Banco.

How to proceed to Execution, where one of the Plaintiffs in Error died, before the Transcript sent to the Exchequer Chamber.

out Execution upon his Judgment without any Rule of Court to warrant it, and took the surviving Defendant in the Action in Execution. And the Court held this to be irregular, and Superfeded the Execution ; because the Plaintiff in the Action should have applied himself to the Court upon the Death of one of the Plaintiffs in the Writ of Error, and apprized the Court of his Death, that the Chief Justice might take Notice

Also, if an Action of Debt be brought upon a Bond to perform Covenants, and there is Judgment by Default, without craving Oyer of the Condition ; there, upon a Writ of Error brought, the Plaintiff in Errors must put in Bail : Because it doth not appear to the Court upon the Record, That the Condition was for Performance of Covenants. Trin. 13 W. B. R.

Where a Writ of Error is brought, and Bail is not put in as the Statute requires, the bringing of the Writ of Error is no Superfedeas to the Execution, for the Plaintiff may sue out his Execution notwithstanding : But the Writ of Error is still in being, until there is a *Nolle prosequi* entered, or Judgment be affirmed or reversed.

All Writs of Error do issue out of the Court of Chancery upon Judgments in Courts of Record, and are returnable in this Court, (except those upon Judgments given in this Court which are returnable in the Exchequer Chamber ; and also upon Judgments in the Court of Exchequer, the Sheriff's Court of London, and the Cinque-Ports) and are directed to Courts of Record, to certify into this Court the Record and Process of the Judgment *omnilus ea tangentibus* : But Writs of false Judgment issue likewise out of Chancery, and are directed to County and Hundred Courts, and are returnable only in the Court of Common Pleas.

Upon a Writ of Error returnable in the Exchequer Chamber ; before the Record transcribed, one of the Plaintiffs in the Writ of Error died ; and thereupon the Plaintiff in the Action taking the Writ to be abated, sued

of it, in order to make a due Return when called for. *Brace*  
*et al. vers. Penoyer. Trin. 9 W. B. R.*

After the Record is transcribed into the Exchequer Chamber, one of the Plaintiff's in the Writ of Error dies; this abates the Writ. But the Plaintiff in the Action cannot sue out Execution upon his Judgment until there is judicial Notice by a *Remittitur* of the Transcript from the Court of the Exchequer Chamber to the King's Bench; for till that is done, the Hands of the Court of King's Bench are tied up by their *Mittitur* to the Exchequer Chamber.

Defendant in Errors in the Exchequer Chamber died after in *Nullo est Erratum* pleaded, and they proceeded to Reversal without a new Writ, *Quod erram vobis Residet*, or a *Sci' fa'* against the Executors *ad audiendum Errores*; and upon an Execution sued after the Death of the Parry, a Restitution was granted, because it is no Abatement: But a *Sci' fa'* might and ought to have been sued out to the Executors. *Show. Rep. 188.*

Error does not lie in the Exchequer Chamber upon a Judgment upon a *Sci' fa'* only in the King's Bench, because it is *Casus omissus* out of the Statute of Queen Elizabeth, which gave Writs of Error returnable in the Exchequer Chamber upon Judgments recovered in the King's Bench by Bill.

Where a Judgment is affirmed in the Exchequer Chamber, and there is afterwards a *Sci' fa'*, and a Judgment thereupon, and a Writ of Error brought *tam in Redditione Judicii* of the first Judgment, which was affirmed before *Quam in adjudicatione Executionis* upon the *Seire facias*: The Court upon Motion quash'd it.

A Writ of Error was brought by the Bail, upon a Judgment recovered against him, upon a *Sci' fa'*, as Bail in an inferior Court. And it was *tam in Redditione Judicii* against the Principal, *quam in adjudicatione* against the Bail; and upon Motion, the Court quash'd the Writ of Error, *quoad* the Principal only, and the Bail proceeded to reverse the Judgment against himself. *Burr & Anwood, 10 W. B. R.*

How to proceed when one of the Plaintiff's in Error dies, after the transcript return'd into the Exchequer Chamber.

Defendant in Errors dies after in *Nullo est Erratum*, it is no Abatement of the Writ.

Error lies not in the Exchequer Chamber upon a Judgment on a *Sci' fa'*.

A Writ of Error upon a Judgment affirmed, and a *Sci' fa'* thereupon was quash'd.

The Bail cannot join the Principal in a Writ of Error with himself out of an inferior Court.



After Issue, the Defendant in Errors died.

Plaintiff in Error sues out a *Sci' fa' ad audiendum Errores*.

Executor sues out a *Sci' fa' quare*, &c.

The Plaintiff pleaded the Writ pending, and good.

Where the Plaintiff dies, the Writ of Error shall abate; but not where the Defendant dies.

Where the Plaintiff dies, against whom two *Nichils* are returned; and the Plaintiff proceeded to reverse the Judgment. And *per Curiam*, a Diversity was taken between the Death of the Plaintiff and Defendant in Errors: *Where the Plaintiff dies it shall abate; but not where the Defendant dies.*

Executors, upon two *Nichils* returned, are made Parties to the Writ of Error.

Upon what Writs of Error, and in what Courts, Bail are to be put in.

3 Jac. 1. cap. 3.

Actions of Debt upon Bond, where the Condition is for Payment of Money only; must put in good Sureties, to prosecute his Writ of Error with effect, and pay the Debt and Damages to be recovered, if Judgment shall be affirmed: For it is Reason the Party shall have a Recompence for his causeless Vexation and Delay: But inferior Courts shall in all Cases, as well upon Verdicts, as other Judgments by Default or Confession in Debt, or otherwise, have their Writs of Error allowed, and a Superseas thereupon, without putting in of Bail, they being

## Error.

Upon a Writ of Error upon a Judgment in the Common Bench, after in *nullo est Erratum* pleaded, the Defendant in the Errors died; and the Plaintiff in the Errors sued out a *Sci' fa'* against the Executor of the Defendant in Errors, *ad audiendum Errores*, and the Executor sued out a *Sci' fa' quare Executionem non*. The Plaintiff pleaded the Writ of Error pending, and held a good Plea; and also, that the Plaintiff in the Error might proceed, which he did, and reversed the Judgment. *Mich. 36 Ca. 2. B. R.*

A Writ of Error is brought, and after the Record is removed, the Defendant in the Writ of Error dies; the Plaintiff sues out a *Sci' fa'* against the Executors of the Defendant.

Also, That the Executors, upon two *Nichils* returned, are made Parties to the Writ of Error; *Because the Damages in the Judgment go to them.* *Yelv. 112, 113.*

He that brings a Writ of Error to reverse a Judgment given in a Superiour Court, by the Statute of 3 Jac. 1. cap. 8. in all Cases after a Verdict; and in all Actions of Debt by Confession or Default; and in all

omitted

omitted out of the several Statutes, which require Bail to be put in by the Courts at Westminster.

A Judgment is recovered against three Defendants, and they bring a Writ of Error, and afterwards one of them releases the Errors; he may be summoned, and severed, and then the other two shall proceed to reverse the Judgment. See 6 Rep. 26. a. b.

Error in Fact was tried, and a Verdict for the Defendant in the Errors, and Costs were ordered to be tax'd, upon the Statute of 3 H. 7. c. 10. occasione Dilationis Executionis. 6 W. B. R.

Where the Defendant in Errors pleads a Release of Errors, and a Verdict is found for him, he shall have no Costs; for that the Judgment is not to be affirmed: But the Judgment shall be, That the Plaintiff in the Errors Nil capiat per Breve suum de Errore, and nor that he be barr'd of his Writ of Error. Note, Here was neither Nonsuit, Discontinuance, or Judgment affirmed, as the Statute of 3 H. 7. cap. 10. requires. 6 W. See Show. Rep. 30.

Error in Fact (viz. Death) assigned after Verdict, and before Judgment; and also Errors in Law assigned, (viz.) That Judgment was given for the Plaintiff, whereas it ought to have been given for the Defendant. The Defendant in the Errors pleads in Nullo est Erratum, whereas he ought to have demurred, for assigning of double Errors; but Judgment was affirmed, because the Record is, That the Party pleaded to be dead appears and pleads, and so it is contrary to the Record.

Eight Defendants. Two are Infrants. In Trespass against them, they all appear by Attorney, which is assigned for Error. This is Error in Fact, and the pleading of in Nullo est

Three Plaintiffs in a Writ of Error: One releases: He may be summoned and severed.

Costs upon a Verdict on a Tryal of Errors in Fact.

3 D. 7. cap. 10.

Where the Defendant shall not have Costs, upon a Verdict of Errors in Fact.

Because the Judgment is, That he be barr'd of his Execution.

3 D. 7. cap. 10.

Death after Verdict, and before Judgment, assigned for Error.

to have been given for

In Nullo est Erratum is pleaded, when it should have been a Demurrer.

A dead Man pleads.

Eight Defendants in Trespass, Two are Infrants.

They appear by Attorney.

Erratum,

**Erratum**, is a Confession of the Error in Fact ; and the Judgment was revers'd : But they ought to have pleaded to the Infancy assigned for Error, so that an Issue thereupon might be tried. 1 Lev. 294.

Where a Judgment is revers'd in Parliament, they give the same Judgment as the King's Bench ought to have done.

the Plaintiff ; as the Court of King's Bench ought to have done when they gave Judgment for the Defendant. *Hill. 6 W. Vide Hill. 25 & 26 Ca. 2. Rot. 411. B. R.*

How a *Judicium Revocetur in Banco Regis* shall be.

*Revocetur*, &c. entred, without Costs ; and no new Judgment be entred by the Court of King's Bench.

How it shall be in the King's Bench, where a Judgment is revers'd by Writ of Error brought by the Plaintiff in the Action.

as the other Court ought to have done ; unless the Judgment be revers'd for something which is not to the Matter of the Action, as a false Entry, or an *Ideo Concessum est*, for *Ideo Consideratum est*, or the like. *Paf. 1 Anna Regina, B. R. Telv. 117, 118.*

Where Judgment was revers'd, and a new Judgment given for the Plaintiff. 1 Lev. 310.

Where a *Nolle prosequi* may be entred upon a Writ of Error out of the Common Pleas.

may be entred, and the Plaintiff may sue out his Execution. And if there be a Superedeas to the Execution in the Sheriff's Office, then there must be a Clause in the Writ to this effect. *Videlt, Brevis Domini Regis de Superedeas super Brevis de Erratis prius in contrarium inde directis in aliquo non obstante.*

Tertenants cannot plead in Abatement of a Writ of Error, but only in Bar.

Where a Judgment given in the King's Bench for the Defendant, upon an Action brought by Original, is revers'd in Parliament upon a Writ of Error returnable there ; the Parliament will give a new Judgment for

the Defendant, and a Writ of Error is brought, and the Judgment is revers'd, there shall be only a *Judicium*

But where there is a Judgment given for the Defendant, and the Plaintiff brings a Writ of Error, and the Judgment is revers'd ; there the Court which reverses the Judgment shall give Judgment for the Plaintiff,

If one brings a Writ of Error upon a Judgment in the Common Pleas, and doth not, after an Eight Days Rule given, certify the Record into this Court ; then a *Nolle prosequi*

Tertenants cannot plead in Abatement of a Writ of Error, but only in Bar : For the *Sciri Facias* against them is not *ad audiendum*

Error



Errors, but *ad audiendum Processus & Recordum.* 1 Lev

Matter, which proves a Writ of Error abateable, is not assignable for Error as in an Ejectment: Entry was assigned after Verdict, and before Judgment, and naught; but only Matter which proves it abated, is assignable. 1 Lev. 155.

Matter, which abates a Writ of Error, is not assignable, as Entry after Verdict, &c.

Debt lies upon a Judgment in the King's Bench after Error brought; because the Record is still in the Court there, and the Writ of Error is only a Superfedeas to the Execution. 1 Lev.

Debt lies upon a Judgment in the King's Bench after Error brought.

After in *Nulla est Erratum* (which joins the Issue) is pleaded, neither the Defendant in the Errors, nor the Plaintiff in the Errors, can alledge Diminution without the Leave of the Court:

No Diminution to be alledged after in *Nulla est Erratum*, without a particular Rule of Court.

But the Court may, if they think fit, order a *Certiorari* to inform their Consciences, and this as well to reverse, as affirm a Judgment. 4 *Anna, B. R.* Note, If it be awarded at the Prayer of the Party without a Rule of Court to warrant it, it is ill.

Upon a Writ of Error, to reverse an Outlawry after Judgment, the Exceptions taken were, That it was not said where, or when, the County Court was held, and therefore it was revers'd. 3 *Anna, B. R.*

What Error is sufficient to reverse an Outlawry after Judgment.

A Verdict was at the Assizes in a *Quare Impedit*, and Judgment there prayed by the Plaintiff, and he had it; and the Defendant immediately allowed a Writ of Error upon it. *Lutw.*

A Writ of Error allowed at the Assizes upon a Verdict, and Judgment in a *Quare impedit*.

§94. Also in another *Quare Impedit*, a Writ of Error was brought upon a Judgment at the Assizes, and the Transcript was made by the Clerk of the Assizes. 4 *Anna Reginae.*

Upon a Writ of Error to reverse a Judgment upon a Common Recovery, and Two *Scire Facias*'s sued out *ad audiendum Errores*, and *Nichils* returned; the Court would not proceed notwithstanding to examine the Er-

Upon a Writ of Error to reverse a Recovery, the Court would not proceed upon Two *Nichils*, but would have a *Sci. feci* returned.

rors until a *Scire feci* returned, because it concerns Men's Estates and Freeholds. *Trin. 34 Car. 2. B. R. Vide 3 Cro. 431. 472, 739. Dy. 320. 201. 301.*

Error in Process, how to be.

Where Consent of the Parties shall make an erroneous Judgment good, and where not.

Parties cannot change the Law. *Hob. 5.* Bar had the Consent been entred upon the Record, and made Part of it, it then would have been good. *1 Jones 199. Cro. El. 664.*

Error brought where there was a Bill of Exceptions.

If there be Error in the awarding of an Execution, the Execution only, and not the Judgment, shall be revers'd. *Hob. 90.*

A Writ of Error was brought upon an erroneous Judgment, given by Consent of Parties, upon a Paper-Rule of Court, and the Judgment was revers'd; because Consent of the

A Writ of Error was brought upon a Judgment in the Common-Bench, after a Tryal at the Bar, and Bill of Exceptions to the Evidence. *Lutw. 905. b.*

Entry.

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# Entry.

First Part 289.

Entry, See

Assignee.  
Condition.  
Possession.

**Entry**, is where a Man enters Personally; or another, by his Command, enters into any Lands or Tenements, to which he hath a Title of Entry.

Entry, what it is.

The Manner of the Entry is this:

If it be a House, and the Door is open, then you must go into it, and say these Words, viz. *I do here enter, and take Possession of this House;* but if the Door be shut, then set your Foot upon the Groundsell, or against the Door of the House, and say the same Words as before. If the Entry be to be made upon Land, then go upon the Land, and say, *I here enter, and take Possession of this Land.* You must be sure to have good Witness of your Entry, and it will be necessary for them to take a Memorandum of it in Writing. If another is to enter for you, then he must say, that *I do here enter, and take Possession of this House, to the Use of A. B.*

The Manner of Entering into Houses and Lands.

If Entry may be made into Land, or any Thing, it shall not be in the Party before Entry. *1 Plow. 133. a.*

Grounds of Law, as to Entries, and how they shall operate.

If Entry cannot be, but only Claim, then it shall be in him before Claim. *Ibid.*

That if neither, nor Claim, can be made, then it shall be in him by Act of Law, without the Act of the Party. *Ibid.*

In all Cases, where a Person hath a Right to an Estate, upon Condition broken, the Party cannot bring his Ejectment for the Recovery of his Right, until an actual Entry: But where a Man is intitled to enter by Discent, or for Non-payment of Money due upon a Mortgage, there

In what Cases there must be an actual Entry:

And where Lease, Entry and Ouster, will do.



there needs no actual Entry, but the Entry and Ouster confessed in the Rule of Ejectment is sufficient.

But Note, Of late Years the Judges have agreed, That the Confession of Lease, Entry and Ouster, will do now in all Cases, except for the avoiding of a Fine, where an actual Entry is necessary; but I think it advisable however to make an actual Entry. 1 Vent. 248.

What is not a forcible Entry.

this is no forcible Entry: For he found the House without a Possessor, and therefore may (having a Title) lawfully enter thereinto.

Lessee for Years enters before his Lease commences: It is a Disseisin.

Lessee of a future Interest enters before Commencement.

He may assign over his Term without Entry.

What preserves a Contingent Remainder.

Conuisee of a Statute cannot assign after a Liberate, until actual Possession.

A Right not assignable till regained by Re-entry.

4 & 5 Anne.

How and what Entry and Claim will do upon a Fine; and an Action to be commenced in a Year after the Entry, and prosecuted.

Court of Common Pleas, or in the Sessions, in any County Palatine, or Grand Sessions in Wales, of any Lands, Tenements or Hereditaments; or shall be a sufficient Entry or Claim

21 Jac. 1. Of Limitations.

commenced within one Year after the making of such Entry or Claim, and prosecuted with Effect.

If a Person, who hath Title of Entry finds an House open, and enters thereinto, and keeps the Possession;

Lessee for Years enters before his Lease commences: This is a Disseisin, and not a Possession, by Virtue of the Lease. 1 Lev. 44. to 46.

Lessee of a future Interest enters by Colour of his Term before it commences; after Commencement the Lessor ousts him: He may assign over his Term without Entry. 1 Lev. 47.

A Right of Entry preserves a contingent Remainder. 2 Lev. 35.

Conuisee of a Statute cannot assign the Land after a Liberate, until he hath taken actual Possession. 2 Lev. 312.

A Right is not assignable, before it be regained by Ejectment or Re-entry. 3 Lev. 312.

By the Stat. 4 & 5 Anne, it is enacted, That no Entry or Claim to be made of or upon any Lands, Tenements or Hereditaments, shall be of any Force or Effect to avoid any Fine levied with Proclamations in the Court of Common Pleas, or in the Sessions, in any County Palatine, or Grand Sessions in Wales, of any Lands, Tenements or Hereditaments; or shall be a sufficient Entry or Claim within the Statute of Limitations, made 21 Jac. 1. unless upon such Entry or Claim, an Action shall be commenced within one Year after the making of such Entry or Claim, and prosecuted with Effect.

The

## Entry.

431

The Grantee of a Reversion may take the Benefit of the Statute of 32 H. 8. ca. 34. and enter for a Condition broken. *Hill & Grange. 1 Plow.*

Grantee of a Reversion may enter for a Condition broken.

32 H. 8. ca. 34.

176. to 179.

Where I may enter into the House of a Stranger to take my Goods, and where not. *Lutw. 1311, 1312.*

Where to enter into the House of a Stranger to take my Goods.

How to justify the Entry of the House of a Stranger, to take the Goods of J. S. in Execution. *Lutw.*

How to take Goods in Execution.

1434, 1386. And how to take a Man upon an *Homine Replegi-*  
*ando, 1432, 1433.*

Era=

# Examination,

Examination, See { First Part 292.  
Evidence.  
Witness.

A Witness ought not to be examined before Tryal.

before any Court, in any Matters concerning the Tryal, except the Plaintiff and the Defendant do agree thereunto: Or by Rule of Court else that he be examined upon Interrogatories at a Judges Chamber, in the Presence of the Attornies on both Sides, in case such Witness be going beyond the Seas, or cannot be present at the Tryal.

How a Will for Lands may be proved.

Evidence at a Tryal, but it ought to be the Original Will it self, if it be in the Office; but where the Original Will cannot be found, there the Register's Book may be admitted.

A Copp of a Will examined in the Prerogative-Office, where Lands are therein devised, cannot be given in

Exigent



# Exigent,

See First Part 295.

**A** **Exigent**, is a Writ which is sued out after a Capias, Alias, and Pluries, in order to outlaw the Defendant if he doth not appear.

An Exigent, *Quid.*

Upon suing out of an Exigent in all Criminal Matters before Conviction, there shall be a Proclamation with the same Teste and Return delivered to the Sheriff Three Months before the Return.

Where the Proclamation on the Exigent must be delivered Three Months before the Return.

Stat. 4 & 5 W. 6. c. 39.  
ca. 22. sect. 4.

**F f**

**Exe**

# Execution.

First Part 295.

**Scire Facias.**

**Fieri Facias.**

Execution, See

**Capias ad Satisfaciendum.**

**Judgment.**

**Elegit.**

**Partners.**

**Baron and Feme.**

An Execution executed,  
what it is.

Execution, is where Judgment is recorded in any Action, Real or Personal, as the Case is; and when any Writ is awarded to give Seisin, or for the levying of his Debt or Damages, this is called a Writ of Execution; and when he hath Seisin of the Lands, or he hath paid his Debt or Damages, or hath the Body of the Defendant awarded to Prison, then this is an Execution executed.

What Executions by the Common Law, and what by the Statute.

Executions well executed, though not returned.

Where Execution may be sued out, although a Writ of Error be allowed.

the Judgment, given here, if Bail (where Bail is required) be not put in, or a *Supersedeas* be not obtained, or if the Transcript of the Record be not certified and returned.

This Court makes Execution where any Judgment is revers'd or affirmed.

What Executions were at the Common Law, and what by the Statute. 3 Rep. 11, 12, 13, &c.

Executions are well executed, though they are not returned. 4 Rep. 67. *Vide Postea.*

An Execution may issue forth out of this Court, notwithstanding a Writ of Error be brought, returnable in the Exchequer-Chamber, to reverse

If a Judgment given in another Court be affirmed or reversed for Error in the King's-Bench, the Party shall have Execution in the King's-Bench.

*Bench*; because the Proceedings in the Court below are enter'd upon Record in the *King's-Bench*: Nay, if it be a Judgment in Debt or Covenant in the *Common-Pleas*, affirmed in the *King's-Bench* upon a Writ of Error, the Plaintiff may outlaw the Defendant in the *King's-Bench* upon this Judgment affirmed, in the same Manner as he could have done in the *Common-Pleas*, whilst the Judgment remained there. And if he be taken upon an *Ex post Ca.* he shall be in Execution presently upon the Arrest, altho' his Body was never brought up, and committed in Execution. 5 Rep. 88. b.

The Court will not deliver one out of Prison upon an Affidavit that lies there in Execution; but the Partry must have a Writ of *Supersedeas* to supersede the Execution, if the Court think fit it to grant it: Because he lies in Prison by the King's Writ, and must be delivered by an Act of as high a Nature, viz. another Writ.

A Man is in Execution, and the Gaoler suffers him to escape, he is not discharged of the Execution, but may be re-taken: But if the Plaintiff permits him to escape, he cannot take him again. *Lutw.* 1266.

A new Tryal was ordered upon Payment of Costs, and Judgment was ordered to stand for Security: And afterwards, the sitting after Term the Cause was tried again, and a Verdict obtained for the same Damages as the first Verdict was: Afterwards, in the Vacation, the Attorney for the Plaintiff sues out an Execution upon the first Verdict and Judgment, and levied the Money; but the Court upon Motion set it aside: Because the Plaintiff ought not to sue out his Execution, but upon the last Verdict; and Judgment could not be signed thereupon till the following Term after the Verdict.

If a Writ of Error be brought in the *Exchequer-Chamber* to reverse a Judgment given in this Court, and the Judgment is affirmed there; yet that

Where there may be an Outlawry after Judgment, in the *King's-Bench*.

When taken upon an *Ex post Ca.* shall be in Execution.

A Prisoner in Execution cannot be delivered out upon a Rule of Court, but it must be by the King's Writ.

he lies in Prison by the King's Writ, and must be delivered by an Act of as high a Nature, viz. another Writ.

The Difference between the Prison-Keeper's discharging of a Prisoner, and the Plaintiff's discharging him.

A new Tryal upon Payment of Costs, and Judgment to stand for Security.

Upon which Verdict Execution to be sued out, and when.

The *Exchequer* cannot make out Execution, but this Court.



Court cannot make out Execution upon the Judgment affirmed: But the Record must be transmitted back to this Court, and enter'd in the Office, and then Execution to be thereupon sued out; for Execution must be done in this Court where the Judgment was given.

If an Execution be returned, executed and filed, the Party can never have another Execution upon that Judgment upon which the Execution was grounded: For there can be but one Execution executed with Satisfaction upon one Judgment; for the returning and filing of it, makes it to be an Execution executed: But before it was returned and filed, it was but an Execution Executory, or *in Fieri*; and there cannot be intended to have been any Satisfaction made to the Plaintiff by Vertue thereof: But if it be not returned and filed, he may have another Execution, by Vertue of the Stat.

Statute 21 Jac. cap. 24.

of 21 Jac. cap. 24. where a Man dies in Execution, the Plaintiff may have an *Elegit* against his Lands.

Where the Entry of *Unica tantum fiat Executio* shall be.

Where Two Obligors in a Bond are sued by several *Precipes*, the Entry is, *Quod unica tantum fiat Executio*; That is, with Satisfaction: For the Plaintiff may have both their Bodies in Execution. 5 Rep. 86. b. 87.

Where Part is levied upon Goods upon an *Elegit*, there may be another *pro Residuo*.

Where Part is levied upon Goods upon an *Elegit*, another *Elegit* may be sued out *pro Residuo*: Because the Statute that gives the *Elegit*, intended to give a Remedy for the

Debt, until it was levied; and the levying of Goods only for Part upon an *Elegit*, is no Impediment; but he shall have another *Elegit*, and take the Lands for the Residue: But when an *Elegit* is sued out, and the Lands taken, and

Where the Plaintiff shall not have a second *Elegit*.

is sued out, and the Lands taken, and the Plaintiff shall not have any farther Execution.

How far Goods are bound by the Delivery of the Writ to the Sheriff.

How far Goods are bound by Delivery of the Writ to the Sheriff, by the Statute of *Frauds and Perjuries*. 29 Ca. 2. cap. 3. See 3 Lev. 69, 70.

29 Ca. 2. cap. 3.

Husband and Wife in Execution for the Debt of the Wife, she shall be discharged.

Husband and Wife taken in Execution for the Debt of the Wife, the Wife shall be discharged, the Husband being in Execution: For the Husband being in Execution, the Wife

And why.

Wife shall not be so also. *Note*, Because the Wife hath nothing to satisfy the Execution with. 1 *Lev.* 51.

The Execution of a *Liberate* is good, without being returned. 4 *Rep.*

Where Executions are well executed.

67. a. And so in all Cases where no Inquest is to be taken, but only Lands delivered and sold, or Seisin had, which are only Matters of Fact. *Ibid.*

The Conuzor of a Statute cannot enter when the Statute is satisfied,

When the Conuzor may enter; and when have a *Sci. Fa.*

but is put to his *Sci. Fa.* But in case of an *Elegit* the Party may enter, be-

cause it is certain how much is to be levied: But in the other it is not; because Damages, Costs and Expences, which are uncertain, are to be levied. 4 *Rep.* 67. b.

Ff 3

*Elegit.*

# Elegit.

Elegit, See { First Part 298.  
                  { Extent.  
                  { Execution.

**A**n *Elegit*, is a Judicial Writ which issues out upon a Judgment recovered for Debt or Damages: By which Writ, the Plaintiff elects *Omnia bona & Catalla* of the Defendant, *Preter boves & afros de Caruca sua*; and also a *Moiety* of all the Lands which the Defendant had at the Time of the Judgment recorded, or at any Time afterwards, to hold the Goods as his own Goods, and the Lands, until he is satisfied.

What Evidence is sufficient to prove a Seisin upon an *Elegit*.

there, upon an Ejectment brought to recover the Possession, it will be sufficient for the Plaintiff to give in Evidence the Copy of the Judgment, *Elegit*, and Inquisition thereupon filed, in which Inquisition the Jury found him seized, and he shall not be obliged to prove the Seisin of the Party at the Time of the Judgment: But if he was not seized, that must be shewn on the other Side.

The Plaintiff may have another *Elegit* after Goods are levied in Part, but not where Lands are,

Lands are once taken, and the Writ returned and filed, he shall have no other Execution. 1 Lev. 92,

Where, in an Inquisition upon an *Elegit*, it is found, That the Defendant was seized of the Land at the Time of the Judgment enter'd into;

Where an *Elegit* is sued out upon a Judgment, the levying of the Goods for Part, is no Impediment, but that he may have another *Elegit pro Residuo*, and take the Lands: But when



If the Parcy dies in Prison, so that there is no Execution with Satisfaction, the Plaintiff shall have an *Elegit* afterwards; because he cannot have Satisfaction according to his first Election: And if the Conuzor of a Statute dies in Execution, the Conuzor shall have Execution of his Goods and Lands. 5 Rep. 86. b. 87.

If upon an Inquisition upon an *Elegit*, the Sheriff returns the Defendant to have 20 Acres of Land in A. and 20 in B. and he delivers the 20 Acres in B. for the Moiety; it is naught: Because he should return a Moiety of each. 1 Lev. 160. And this may be avoided upon Evidence in an Ejectment for the Lands.

An *Elegit* executed in London by a Serjeant at Mace, and held good. 4 Rep. 65.

The Defendant may enter upon the Plaintiff after Satisfaction received upon an *Elegit*, but not in case of an Extent upon a Statute. 4 Rep. 67. b. See Title Execution.

If Tenant by *Elegit*, Statute-Merchant or Staple, be put out of Possession by the Heir at Law or Reversioner, he may have his Action of Trespass, or re-enter and hold over, till satisfied. 4 Rep. 28. b.

Where a Man hath Lands in more Counties than one, if the Plaintiff awards an *Elegit* upon the Record of the Judgment but to one County, and extends the Lands upon this *Elegit*, and afterwards files it, is barred for ever, and cannot sue out an *Elegit* into the other Counties: But if upon the Roll of the Judgment he awards *Elegits* into several Counties (as he may do into every County in England); then he may proceed on them as he sees good, and execute one first, and the other afterwards, or may proceed on them all as he sees Cause; and he need not file the Inquisitions on them, till he have Occasion to use them: And also, though he do file the Inquisitions taken upon some of

*Elegit* lies after an Execution, without Satisfaction.

Conuzor dies in Execution, there may be Execution against his Lands and Goods.

How the Sheriff is to make his Return upon an *Elegit*.

An *Elegit* executed in London by a Serjeant, and good.

The Defendant may enter after Satisfaction, upon *Elegit*.

What Remedy where disturbed by the Heir.

How to award *Elegits* into several Counties, whereby to make the Land in all those Counties liable.

them; yet he may sue out *Elegits* into all the other Counties wherein *Elegits* are awarded upon the Record.

Whether it may be sued out upon a Judgment above a Years standing, *sans Sci. Fa.*

It hath been held, That an *Elegit* may be sued out upon a Judgment entered above a Year and a Day before without a *Scire Facias*: Because an *Elegit* doth not actually turn the one Party out, and put the other into Possession, but only gives the Plaintiff a Title to bring his Action: And if the Defendant hath any Thing to plead in Discharge of the Judgment, he hath Time enough to do it; because the Plaintiff cannot have Possession, until he recovers it by Ejectment. But the contrary hath been lately held, viz. That unless the Plaintiff actually sues out his *Elegit* within a Year after the Recovery of his Judgment, and continues it down upon the Roll of the Judgment, with a *Vicescomes non misit breve*, he cannot have an *Elegit* after the Year and a Day without a Judgment upon a *Sci. Fa.*

Tenant by *Elegit*, not punishable for Waste.

Where the Writ is good, and the Entry erroneous.

It may be after *Fi. Fa.* and *Ca. Sa.*

It may be *pro Residuo*.

So also a *Fi. Fa. pro Residuo*.

An Advowson not extendable.

*Westm. 2. rap. 13.*

must set out by the Sheriff at an Annual Value, *Ultra Repriam* which cannot be in this Case.

It hath been held, That an *Elegit* may be sued out upon a Judgment entered above a Year and a Day before without a *Scire Facias*: Because an *Elegit* doth not actually turn the one Party

Tenant by *Elegit*, Statute-Merchant or Staple, are not punishable for Waste. *6 Rep. 37. b.*

Although the Writ of *Elegit* is right, yet if the Entry be erroneous the Writ will not help it.

An *Elegit* may be sued out after a *Fi. Fa.* returned *Nulla bona*, and after a *Ca. Sa.* returned *non est Inventus*. *Hob. 57.*

So also it may be *pro Residuo* after Part levied upon a *Fi. Fa.* *Hob. 58.*

If upon an *Elegit*, nothing but Goods are taken, which are not enough, the Plaintiff may have a *Fi. Fa. pro Residuo*. *Hob. 58.*

An Advowson in Gross, is not extendable upon an *Elegit*, by the Statute of *Westm. 2. cap. 18.* Because an Advowson cannot be said to be Land as that Statute says. Also a Moiety

Exce

# Exception,

See First Part 300.

**A**n Exception, is a Thing taken out of the Deed, and is as if no Pention had been made of it in the Deed. See Carter 99.

Exception, Quid.

Where a Pardon is with an Exception, the Party who pleads it ought to shew, that he is not any of the Parties excepted. 1 Lev. 26.

How to plead a Pardon with an Exception.

If a Man makes a Feoffment of a Manor, excepting the Trees; and afterwards the Feoffee buys the Trees; they are now become Parcel of the Freehold: *But if an Acre or an House had been excepted, that could never have been Parcel again.*

Trees excepted, and afterwards become Parcel.

Feoffment of a Manor, except Black Acre, to himself for Life only: *Habendum*, except before excepted, to the Use of A. in Tail, Black Acre shall not pass to A. in Tail. 1 Lev. 287.

Feoffment of a Manor, except Black Acre: *Habendum*, except before excepted.

An Exception is always of a Thing granted, and a Thing *in esse*. Co. Litt. 47. Dy. 59. a. 11.

Of what an Exception is.

An Exception that crosses the Grant, or is repugnant to it, is void. Hob. 72, 170.

What are void Exceptions.

An Exception excepts clearly, but a Saving doth not. Carter 99.

Exception and Saving, the Difference.

Other than, will make an Exception, as in the Statute of Fines, 4 H. 7. Carter 99.

Other than.

An



## Exception.

An Exception must be of a Thing severable from the Grant.

What the Thing excepted must be.

Particular Thing, or of a Part of a Certainty. *Mo. Case, 1236. Dy. 103.*

Where by the Exception of all Woods, the Soil is excepted.

Woods: By this, the Soil is excepted. *5 Rep. 11. Poph. 146.*

Not by the Exception of all Trees.

The Five Things observable in Exceptions.

An Exception must be of a Thing which is severable from, and not inseparably incident, to the Grant. *Dy. 59. a.*

The Thing excepted, must be a Particular, not a General Thing; and not of a Particular Thing out of a Part of a Certainty. *Mo. Case, 1236.*

If Woods, whereof a *Precipe* lies by the Name of *So many Acres of Wood*, are Parcel of a Manor, and a Lease is made of the Manor, excepting the

But if I except all my Trees growing in my Manor, there the Soil itself is not excepted. *11 Rep. 49.*

These Five Things following, are observable in the Exceptions before-mentioned of Trees.

1<sup>st</sup>, They remain Parcel of the Inheritance, although they are excepted. *11 Rep. 48, 50. 5 R. 11.*

2<sup>dly</sup>, That the Soil itself is not excepted; but sufficient Nurtiment for the Trees.

3<sup>dly</sup>, That the Lessee shall have the Pasture growing under the Trees.

4<sup>thly</sup>, The Lessor shall have all the Benefit of the Trees. *11 Rep. 50. a.*

5<sup>thly</sup>, He shall have the Fruit and Mast of the Trees. *11 Rep. 50.*

Can't except what belongs to another.

No Man can except that to himself, which belongs to another by Law. *5 Rep. 12. b.*

# Essoign.

See First Part 299.

**Essoign**, is where an Action is brought, and the Plaintiff or Defendant cannot conveniently appear at the Day in Court; then he shall be essoigned to save his Default.

An Essoign, what.

What an Essoign is. See further in *Lutw.* 861. b.

What it is.

**Estrepe**

# Estrepement,

See Waste.

What this Writ is.

**E**strepement, is a Writ that lieth where one is impleaded by a Precipe quod Reddar, for Land: Where, if the Demandant supposes that the Tenant will commit Waste pending the Plea, he shall have this Writ, which is a Prohibition, commanding him that he commit no Waste pending the Plea.

Where a Writ of Estrepement lies.

A Writ of Estrepement lies also in an Action for Waste, as well before as after Judgment, and before Execution; because Damgages cannot be recovered for more than is in the Court, nor can Waste be assigned after the Writ. 5 Rep. 115. b.

What the Sheriff may do upon it.

The Sheriff may by this Writ resist those that will make Waste, And if he is put to it, he may imprison the Offenders, and make a Warrant to others to do it, and may (if Occasion) raise *Posse Comitatus*. 5 Rep. 115. b.

To whom this Writ is to be directed.

This Writ may be directed, either to the Tenant and his Servants, or to the Sheriff; and if it be directed to the Tenant and his Servants, and they are duly served with it, and afterwards commit Waste, they are imprisonable for the Contempts; but not so when directed to the Sheriff, because he must raise *Posse Comitatus*, Hob. 85.

Estovers.



# Estovers.

Estovers, See { Appendant,  
and  
Appurtenant.

Estovers contains House-boot, Hedge-boot, and Blow-boot; and if he hath in his Grant these general Words of reasonable Estovers in Woods, &c. he may thereby claim those Three Estovers. What Estovers Tenant for Life, and Tenant for Years can have. Co. Litt. 41. b.

Estovers, what.

In all Cases of Estovers, when the Alteration of the Quality, or Name of the Part of the House, doth not infer any Prejudice to the Tertenant, the Estovers and Services remain. 4 Rep. 87. b. 88. a.

Where Estovers and Services remain after an Alteration made.

Where a Man hath Estovers, either by Grant or Prescription to his House; although he alters the Rooms and Chambers of the House, as to make a Parlor where the Hall was, and such-like Alterations of the Qualities, but not of the House it self, and not making of new Chimnies, whereby no Prejudice can come to the Owner of the Wood; this is not any Destruction of the Prescription. Rep. 87. a. 86.

Where a Man hath Estovers by Grant or Prescription, Alteration of the Rooms shall not prejudice it.

Where Men have Mills or Houses, to which Water-courses and Estovers are Appendant or Appurtenant, and they are blown down, or burnt by lightning, or other Accident. If the Owner Re-edify them in the same Place and Manner as before, they shall have the ancient Appendants and Appurtenances, as the other Mills or Houses had before. 4 Rep. 86.

Where Appurtenant do belong to new Houses or Mills, built in the Places of the old.

Estate.

# Estate.

Estate, See } First Part 300.  
Inheritance.

Estate, what.

**E**state, is that Title or Interest that a Man hath in Lands or Tenements; as Estate in Fee Simple, Fee Tail, Conditional, &c. See Litt. 3 Book, cap. 5.

The Word, *de Corpore*, not absolutely necessary to make an Entail, if there are Words *Tant amount*.

*Tant amount*, for the precise Words (*de Corpore*) are not necessary to the Creation of an Estate Tail, so long as there are Words *Tant amount*; as to one, *Et Heredibus suis de se Execut.* &c. 7 Rep. 42. a.

A Man hath an Estate in B. in Fee, and deviseth in these Words: *I give all my Estate in B. to J. S. without the Words Heirs*: Here J. S. shall have the same Estate in the Land as the Devisor had; because he giving *all his Estate*, whatever Estate he had shall pass to the Devisee.

Enrol

# Enrolment.

See First Part 301.

**Enrolment of a Deed**, is the Entering of it fairly upon the Records of the Court of Chancery, or one of the Courts at Westminster, or at the Quarter-Sessions of the Peace.

Enrolment, *Quid*.

**To Estate**, whereby any Inheritance or Freehold shall be made to any Person, shall pass by any Bargain and Sale only, unless the same be enrolled within Six Months, in some of the Courts mentioned in the Statute of 27 H. 8. *cap.* 16.

What Bargains and Sales in Fee are good.

by Deed indented and

27 H. 8. *cap.* 16.

**Note**, Bargains and Sales for Years, in Consideration of Money, have the same Operation by Bargain and Sale, without Enrolment, as Bargains and Sales of Fee-Simples have with Enrolment.

What Bargains and Sales for Years are good.

**When** a Man by Deed of Bargain and Sale sells a Reversion, and before the Enrolment levies a Fine to the same Person. And afterwards the Deed is enrolled within the Six Months, the Conuzee shall be bound by the Fine, and not by the Deed enrolled. 4 Rep. 71.

Bargain and Sale, Fine, Enrolment.

Deed is enrolled within

What shall operate.

**Note**, The Day of the Date shall not be any Part of the Six Months. Stat. 139, 140.

What shall be the Six Months.

**The Enrolment** shall have Relation to the Delivery of the Deed, but that only to avoid mean Incumbrances made to a Stranger after the Delivery, and before Enrolment, but not to defeat any legal Estate the Interim made to the Bargainee.

To what the Enrolment shall have Relation, and to what Purposes.

4 Rep. 71. a.

**Note**,



How it vests.

What the Enrolment makes the Deed.

shall operate by Vertue of the Statute of Enrolments: But an Enrolment of a Deed cannot be pleaded, without shewing of the Original Deed. *Co. Litt. 225. b.*

Where a future Interest of a Term will pass without Enrolment or Attornment.

the Statute of Uses, otherwise there must be an Attornment.

4 & 5 Anne.

What is a sufficient Proof of a Deed.

upon a Tryal. For every Deed, before it is enrolled, is to be acknowledged to be the Deed of the Party before a Master of the Court of *Chancery*, (if enrolled in *Chancery*) or before a Judge of the Court where it is enrolled; and this is the Officer's Warrant for the Enrolling of it.

Where a Deed ought to be enrolled, and where not.

conveyed in a Deed in Consideration of Money paid, and also in Consideration of natural Love and Affection to a Wife, Child, or Relation; there it is not necessary to enrol the Deed, but the Lands will pass, tho' the Deed be not enrolled. For in the former Case, it is a meer Deed of Bargain and Sale, which passeth nothing without Enrolment; but in the latter Case, the Land will pass by way of Use.

For Enrolling and Pleading off of all Grants of Deodands, &c. in the Crown-Office.

*Stat. 4 & 5 W. 3. c. 20. cap. 22. sect. 1.*

*Note*, It doth not vest by the Statute of Enrolments, but by the Statute of Uses. *Hob. 136.*

The Enrolling a Deed doth not make it to be a Record, but it thereby becomes a Deed recorded, and it

A Future Interest of a Term will pass by Bargain and Sale, without Enrolment or Attornment of the Term, which was granted by him who had the Fee: For then it will execute by the Statute of Uses, otherwise there must be an Attornment. *2 Rep. 35. b.* Until by the late Statute of 4 & 5 Anne, for the Amendment of the Law.

The Enrolment of a Deed, if it be acknowledged by the Grantor, is a sufficient Proof of the Deed it self

If Lands be conveyed in a Deed for Money only, then the Deed must be enrolled, else the Lands will not pass by the Deed: But if Lands be

Grantees from the Crown, of Felons Goods, Deodands, and other Forfeitures, shall not be compelled to enrol their whole Charter or Grant in the Crown-Office, but only such Part thereof as may express the Grants of such Felons, Goods, Deodands,

dands, and Forfeitures, for which the Clerk shall receive 20 s. and no more; and after such Enrolment, it shall be pleaded to any Inquisition. Statute 4 & 5 W. 4 & 5 W. & 6. cap. 22.

An Heir, Devisee, or Purchaser, must also enrol; or Process will go out against them. Ibid. Sect 3.

Heir, Devisee, or Purchaser, must enrol.

G g

Escape.

# Escape,

Escape, See } First Part 304.  
Prison, and Prisoner.

**E**scape, is where one that is arrested, or is a Prisoner legally committed, and makes his Escape before he be delibered by due Courie of Law.

About Escapes. 8 & 9  
Wm. cap. 26.

and for preventing Abuses in Prisons, and pretended Privilege Places.

Where a Prisoner may be taken up who is out upon a Day-Rule, and where not.

Escape-Warrant; but if he goes into the Country, or to a Fair or to a Play, or to any such sort of Place for his Diversion or Idleness, he may be taken up, though he hath a Day-Rule  
*Trin. 6 Annæ, B. R.*

How a Declaration must be in case upon an Escape.

But if he had said, That the Prisoner was indebted to him 40 s. and proved at the Tryal but 30 s. it had been good  
*2 Lev. 85.*

Rescue pleaded to an Escape on Measne Process, and good.

Cases lies upon a Promise to save a Sheriff harmless from Escapes.

See the Act made the 8 & 9 Wm. cap. 26. For the more effectual Relief of Creditors in case of Escapes

A Prisoner who is in the Rules or out upon his Day-Rule, and about his Business, viz. advising with his Council, or consulting with his Creditors, cannot be taken upon a

Case was brought for an Escape upon an Arrest, and shews no Cause of Action. In Evidence, it is naught

In an Action for an Escape upon Measne Process, the Defendant pleads a Rescue without a Return of it, and held good. *2 Lev. 144.*

A Promise to save the Sheriff harmless from all Escapes, if he would permit one taken in Execution to stay Three Days in his House



## Escape.

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which he did, and the Prisoner escaped, and held that the Action well lies. 2 Lev. 17.

A Man is in Execution, and he escapes out of the Custody of the Gaoler; he is not discharged from the Execution, but may be retaken. But if the Plaintiff will permit him to escape, he cannot afterwards retake him. Lurr. 1266.

A Prisoner in Execution suffered to escape, may be retaken.

Case lies for the Escape of one taken upon a Writ de Excommunicato Capiendo. Lurr. 1213.

Cases lies for an Escape upon an Excom. Ca.

Where a Prisoner in Execution escapes, yet the Sheriff may pursue him into that or any other County; and if he retakes him upon a fresh Pursuit before Action brought, this shall excuse the Sheriff. 3 Rep. 44. b. 55. a. b.

The Sheriff may pursue his Prisoner all England over.

The old Sheriff omits the turning over to the new Sheriff of a Prisoner in Execution in his Custody; this is an Escape in the old Sheriff. 3 Rep. 1, 72.

Old Sheriff omits turning over of a Prisoner, this is an Escape. of the Law.

Gg 2

Extent.





Two or more are bound in a Recognizance or Statute, everyone is bound in the whole; yet the Lands of one shall not be solely extended. 3 Rep. 14.

Two are bound in a Recognizance or Statute, each is bound in the whole.

Where there is an Extent upon a Statute, and a Liberate thereupon upon which several Houses are delivered, but the Liberate is not returned; yet it is good. 4 Rep. 67. a. The regularly when Inquisitions are taken, the Writs ought to be returned. See Title Execution.

An Extent and Liberate is good, tho' the Liberate be not returned.

In a *Sci' fa' ad Computandum*, the Conuzee shall Account according to the extended, not the real Value of the Land. *Hard. 136.*

How the Conuzee shall Account upon a *Sci' fa'.*

In case of an *Elegit* upon a Judgment after the Plaintiff hath received his Satisfaction, the Defendant may enter, for there the Plaintiff shall not have Damages, Costs, or other Thing, but only the Land until the Debt be satisfied: But in case of an Extent upon a Statute, the Conuzor cannot enter, for the Conuzee

Where a Defendant in an Extent upon an *Elegit* may enter:

shall hold the Land, not only until he is satisfied Debt with Damages for the detaining of it, and also his Costs of Suit; but also for his reasonable Labours and Expences, &c. for the Entry is, *Tenendum ut liberum Tenementum, &c. quousque debitum predictum una cum damnis & Custagiis suis necessariis & rationabilibus, ut in laboribus sectis dilationibus & expensis, &c.* which are uncertain, and the Conuzee being in by Matter of Record, he shall not be put out but by Record, viz. a *Sci' fa'* brought against him; and the Court of Chancery, out of which the Writ issues, shall adjudge of the Damages, Labours, Expences, &c. *Ca. 4. R. 67. b.*

But not upon an Extent upon a Statute.





# Fines,

Conveyance,

Baron & Feme.

Fines, See Enrolment.

Pleas.

Recovery.

Uses.

*FINIS* dicitur *Finalis Concordia*  
*quia finem litibus imponit.* Co.

Lit. 120. b. r. 21. a. 21. a. 21. a.

There are Five Parts of a Fine:

1<sup>st</sup>. An Original Writ.

2<sup>dly</sup>. *Licentia Concordandi*.

3<sup>dly</sup>. The Concord.

4<sup>thly</sup>. The Note of the Fine.

5<sup>thly</sup>. *Per Finis*. Vide 5 Rep. 38.

What Deeds of Declaration of Uses or Trusts of any Fines or Recoveries shall be good, by the Statute of 4 & 5 Anne, notwithstanding the Statute of Frauds. See Title Uses.

What Entry or Claim, and Persecution thereupon, shall be sufficient to avoid any Fine, or be an Entry within the Statute of Limitations, 21 Jac. cap. 16. See Title Entry.

Husband and Wife, Tenants in Special Tail: The Husband levies a Fine, this Bars the Entail to the Issue totally. But it remains in Right to the Wife as to her self, and to all the Estates and Remainders depending upon it; and to all the Consequences of Benefit to her self, and others, so long

Fines, Quid.

The several Parts of a Fine.

What Conditions are bound by Fines and Recoveries.

What Deeds of Declaration of Uses shall be good, notwithstanding the Statute of Frauds, and also of Trusts: 4 & 5 Anne.

What Entry to avoid a Fine, or Statute of Limitation.

4 & 5 Anne, rap.  
21 Jac. rap. 16.

Husband and Wife, Tenants in Special Tail: The Husband levies a Fine, it bars his Issue.



as she lives, as if the Fine had not been levied. *Hob. 237, 239.*

Fine levied by Issue in Tail.

When Issue in Tail levies a Fine with Proclamations in the Life of the Tenant in Tail to another, and afterwards Tenant in Tail dies, this shall bind the Issue in Tail, and his Issue. *3 Rep. 51. 3 Rep. 44. a.*

Fine levied by Tenant for Life, Years, or Copyholder.

A Fine levied by Tenant for Years, or Life, or Copyholder, who continues the Possession, and pays the Rents, shall not bind the Lessor, tho' after Five Years Non-claim, also the Lessor shall have Five Years Non-claim after the Determination of their Estates. *3 Rep. 77, 78. &c.*

For Fines and Non-claims.

Fine and Non-claim bar a Wife of Dower.

this bars the Wife of her Dower. *2 Rep. 93. a.*

Feme Covert levies a Fine; how to be avoided.

What Conditions are bound by Fines and Recoveries.

A Fine or Recovery cannot destroy an Executory Estate.

But a Remainder it shall.

Where an Entry to avoid a Fine is attach'd in one of full Age, it shall run on notwithstanding Infancy,

and within a Year afterwards enters, and adjudged not Congeable: Because it being attach'd in the Life of the Disseisee, and he not entring, it shall, tho' there be Infancy, still run on till the

When Issue in Tail levies a Fine with Proclamations in the Life of the Tenant in Tail to another, and afterwards Tenant in Tail dies, this shall bind the Issue in Tail, and his Issue. *3 Rep. 51. 3 Rep. 44. a.*

A Fine levied by Tenant for Years, or Life, or Copyholder, who continues the Possession, and pays the Rents, shall not bind the Lessor, tho' after Five Years Non-claim, also the Lessor shall have Five Years Non-claim after the Determination of their Estates. *3 Rep. 77, 78. &c.*

For Fines and Non-claims, see the Case of Fines. *3 Rep. from 44. to 91. See Show Rep. 48, 41, 74.*

The Husband levies a Fine with Proclamations, and dies, the Five Years Non-claim pass after his Death, this bars the Wife of her Dower. *2 Rep. 93. a.*

A Feme Covert levies a Fine, this shall bar her and her Heirs, if her Husband doth not enter, and avoid it. *10 R. 43. a. 7 R. 8. a. Hob. 225.*

What Conditions are bound by Fines and Recoveries, and what not. See Title Recovery; and *2 Rep. 73, 74. &c.*

A Fine or Recovery cannot destroy an Estate Executory, which depends upon Contingencies: Because it is uncertain whether there shall ever be such an Estate in Esse for the Fine to work upon; but it will destroy an Estate in Remainder, because that is an Estate vested.

Disseisor levies a Fine with Proclamations. Disseisee after Three Years, and within Five Years, dies, His Heir within Age, who after the Five Years expired comes of full Age,

the Five Years are past, and Infancy shall not hinder it.  
*Plow. from 355. to 376.*

In the pleading of a Fine or Recovery to Uses, you need not set forth the Deeds which lead the Uses, but so far, that the Use or Recovery (as your Case is) is levied to such Uses; and in Evidence you must produce the Deeds to prove the Uses. *Hill. 8 W. B. R.*

Several good Directions how to plead a Fine. *Lutw. 1621, 1623. 2 Lev. 31.*

How to plead a Fine or Recovery to Uses.

Directions for it.

Where the Uses of a Fine are declared by a Deed before the Fine, there no other Uses can be declared by Parol. *Ram and Thacker, 10 W. B. R.*

Where the Uses are declared by a Deed before the Fine.

A Fine may be levied of Lands in ancient Demeasne; those Fines make a Discontinuance, but do not bar by the Statute of Nonclaim. *Lutw. 1581, 782, 778, 961.*

May be levied in ancient Demeasne.

See Title Error, for the Limitation of the Time for bringing of Writs of Error upon Fines, *per Stat. 10 & 11 W. 3. c. 14.* which appoints Twenty Years.

See Title Error, and Stat. 10 & 11 W. 3. c. 14.

By a Deed or Fine to Uses, a Rent may pass without the Assent or Attornment of the Tenant; because necessary to these Attornments. *Lutw. 246.*

A Rent may be by a Deed or Fine, without Attornment.

Tenant for Ninety nine Years, if he so long lives, levies a Fine, and dies, he in Reversion shall have other Five Years after his Death to avoid the Fine. *2 Lev. 32.*

Where the Reversioner shall have Five Years after the Tenant's Death.

Tenant in Tail to him and the heirs Males of his Body hath Three Sons; the Second levies a Fine in the life of the Father, the Father dies, the Eldest is not barr'd; but if the Eldest dies without Issue, leaving the Second, the Third is barr'd. *Hob. 333, 334.*

Where the Fine of the middle Brother bars the younger, not the elder.

# Fines for Offences,

Fines for Offences, See { Leets.  
Amercements.  
Courts.

**Fines for Offences.**  
**Fine for an Offence, is a Sum of Money, which a Man is to pay to the King for any Contempt or Offence against the Government.**

A By-Law to levy by Distress, is good, but not to sell.

A voidable Fine set; how it is to be.

be avoided by the Plea of the Pattry fined; otherwise it is in the Case of a Fine that is void.

What Capiatus are taken away per 4 & 5 W. & M. cap. 12.

found against him, for that is Casus omisus out of the Act.

A Juror who will not swear, may be fined.

Where the Steward of a Leet may fine a Constable or Tything-man.

who refuses to make a Presentment in a Leet.

Where a Juror in a Leet.

A By-Law to levy a Penalty by Distress only, is good; but to levy by Distress and Sale of Goods, is naught. 3 Leo. 281.

A Fine set upon one which is voidable, is not void absolutely, but continues to be a good Fine, until it is avoided by the Pattry fined; otherwise it is in the Case of a Fine that is void.

All Capiatus Fines are now taken away, by the Statute of 4 & 5 W. & M. cap. 12. except where a Defendant pleads *Non est factum*, and it is that is Casus omisus out of the Act.

If a Juror at the Bar will not swear, he may be fined. 2 H. 6. 12. b.

The Steward of a Leet may impose a Fine upon one who is chosen Constable, and refuses to be sworn: So also he may upon a Tything-man, who refuses to make a Presentment in a Leet.

If one of the Jury in a Leet departs without giving of his Verdict, the Steward may fine him. Co. 8. R. 38. a, b.



To every Fine, Imprisonment is incident, and when the Judgment is *Imprisonment is incident to every Fine.*  
*quod defendens Capiatur, that is, Capiatur quousque finem fecerit.* Co. 8. R. 59. b. Cr. Car. 340. Co. Lit. 126. b.

*Utrum de Fines*

See First Part 310.

*A* fine is a sum of money which is paid to the King or to some other person, for a crime or offence committed by the offender. It is a punishment which is inflicted on the offender, and is a part of the sentence which is passed on him. It is a sum of money which is paid to the King or to some other person, for a crime or offence committed by the offender. It is a punishment which is inflicted on the offender, and is a part of the sentence which is passed on him.

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# Filing of Process, &c.

See First Part 310.

What a File is.

**A** File or Filace, whereupon Process and other Watters are filed, is commonly a Piece of Cats-Buts twisted hard and dried, and is thrust through any Thing which is filed; and being then in the proper Office for that Purpose, it becomes a Record of the Court.

Filing of Process, &c. makes it a Record.

When a *Capias* may be filed.

**Record** of the Court out of which it issued, and wherein it is returnable.

When a Declaration, or Warrant of Attorney, may be filed after Error.

**Court** to the contrary; for the Defendant is at no Prejudice by the filing of them.

What Affidavits must be filed before read.

29 Car. 2. cap. 5.

**The** filing of any Process, or other Thing in Court, makes it a Record of the Court.

**A** *Capias* that is duly sued forth and returned, ought to be filed. For it is the filing of it which makes it a

**A** Declaration may be filed in the Office, after a Writ of Error is brought. And so may a Warrant of Attorney, unless there be a Rule of

**What** Affidavits must be filed before they are read, being taken by Commissioners, by 29 Car. 2. cap. 5. See Title Affidavits.

Falso

# False Latin, and Form.

See First Part 311.

**WHERE** false Latin in several Places of a Declaration shall not hurt it. *Lum. 885. b.*

**Now**, in a *Quo Warranto*, a Man may claim such Franchises by the general Words of *Tot talia eadem & Consimilia*, without shewing of or pleading of the Charter: And when he shall be forced to plead a Charter. *9 Rep. 27.*

**Also**, when a Man claims such Franchises by the general Words of *Tot talia Privilegia, &c.* as such an one had; which Estate, he to whom the References are made ought to have in the Franchises. *9 Rep. 27. b.*

**What** ancient Franchises ought to have an Allowance, and what not. *9 Rep. 27. b.* And of Allowance of Charters in *Eyre, King's-Bench, Common-Pleas*, and *Exchequer*, *Ibidem 28.*

Where false Latin shall not hurt a Declaration.

How, in a *Quo Warranto*, a Man may claim Franchises.

Where Franchises are claimed by general Words.

What ancient Charters ought to have an Allowance, and what not.

Forma



No Forfeiture can be imposed by Patent.

Copyholder for Life commits Felony.

holder is pardoned. The Forfeiture is not to the Lord, but to him in the Reversion; because the Estate for Life was determined by the Attainder: For a Copyholder (in the Eye of the Law) is but a Tenant at Will, and the Attainder determines the Will;

Attainder determines the Estate.

take the Advantage.

Where the Lord may seize for the Forfeiture of a Copyhold Estate, and where not.

The Lord may grant a forfeited Copyhold before Seizure.

immediately in the Lord, as in his Reversion. 1 Lev. 26. Vide 3 Lev. 94.

Where a *Dominus pro Tempore* may admit a Copyholder after Forfeiture:

But a Lord by Tort cannot.

Rightful Lord. 1 Lev. 26, 27. But a Lord, who is a Disseisor, may admit the Heir of a Copyholder upon a Discent, and is shall bind the Rightful Lord.

Where Non-Payment of a Fine no Forfeiture.

The Unreasonableness of the Fine must come on the Tenant's Part.

No Forfeiture can be imposed upon a Subject by Patent. 8 Rep. 125. 4.

A Copyholder for Life commits Felony, and is attainted of it, he in Reversion for Life enters, the Copyholder is pardoned. The Forfeiture is not to the Lord, but to him in the Reversion; because the Estate for Life was determined by the Attainder: For a Copyholder (in the Eye of the Law) is but a Tenant at Will, and the Attainder determines the Will; for by the Attainder he cannot hold an Estate: But of this Determination, the Grantee in Reversion shall take the Advantage. 3 Lev. 94. Vide 1 Lev. 263.

The Lord cannot seize for the Forfeiture of a Copyhold Estate, without a Custom: But he may seize till the Heir comes of Age, without a Custom. 1 Lev. 63.

Upon a Forfeiture of a Copyhold, the Lord may grant the Copyhold before Seizure: Because this is a Determination of the Will, and is immediately in the Lord, as in his Reversion. 1 Lev. 26.

*Dominus pro Tempore* of any Legal Title, although at Will, may admit a Copyholder after a Forfeiture, and it is good; for he may make voluntary Grants: But a Lord by Tort or Disseisin cannot by such Admirance purge the Forfeiture, as to the

Non-Payment of a Fine, is no Forfeiture of a Copyhold Estate, unless there be a Demand and Denial of it: Also, the Unreasonableness of a Fine must come on the Tenant's Part. Hob. 135.

Tenant

**Tenant for Life** suffers a Recovery of his Estate before the 14 *Eliz.* cap. 8. it is a Forfeiture, and he in Remainder may enter. 1 *Rep.* 14, 15, 16.

**All Estates, Charges, Leases, &c.** made by Tenant for Life before the Forfeiture of his Estate, remain good till the Death of the Tenant for Life.

1 *Rep.* 67. 4.

**Tenant for Life, Remainder in Tail;** Tenant for Life, and the first Remainder Man levy a Fine: He in Remainder in Tail dies without Issue, and the other Remainder Man enters for a Forfeiture, and held none; neither doth it make any Discontinuance, for each gave what he lawfully might. 1 *Rep.* 76. *Breton's Case.*

**Tenant for Life, Remainder in Tail, Reversion in Fee, Tenant for Life** enfeoffs the Reversioner, it is a Forfeiture of his Estate, and deverts the Estate Tail. 1 *Rep.* 140. 4.

**A Forfeiture of the Office of Marshal of the King's-Bench** (which is an Office of Inheritance), was found by Inquisition out of the *Petty-Bag-Office*, and it was strongly moved by the King's Council for a Writ of Seizure. But the Lord-Keeper, upon great Consideration, did refuse to grant it, and gave the Defendants a reasonable Time to traverse the Inquisition Peremptory. *Hill. 5 W. & M. in Banc.* For although the Inquisition finds a Title in the King, yet the Inquisition is traversable; and it is very hard to turn a Man out of Possession upon a bare Inquest of Office, without hearing what the Defendant hath to say for himself.

**An Officer for Life** commits a Forfeiture of his Office, the Forfeiture is to him in Reversion, and not to the King. 3 *Ley.* 288. See 1 *Plow.* 378. 10 382.

Recovery by Tenant for Life, is a Forfeiture to him in Remainder.

14 *Eliz.* cap. 8.

**All Leases, Charges, &c.** made by Tenant for Life, remain good, after Forfeiture of Tenant for Life.

**Tenant for Life, Remainder in Tail, Tenant for Life, and first Remainder** levy a Fine, it is no Forfeiture.

**Tenant for Life, Remainder in Tail, Reversion in Fee, enfeoffs the Reversioner.**

Where a Forfeiture is found of an Office of Inheritance by Inquisition.

**An Officer for Life** commits a Forfeiture, it is to him in Reversion, not to the King.

Registers Office is within the Statute of 5 & 6 Ed. 6. cap. 16.

Who shall have the Forfeiture upon a Statute.

Where the Forfeiture is a Prejudice to any particular Person, this Person shall have the Forfeiture. 3 Lev. 290.

The King may, without Office, grant an Office forfeited to himself.

Where an Office is forfeited to the King, he may grant it without Office found; because no Estate or Freehold is divested: But the Office is become void, and the Power of disposing of it is come to the King. 3 Lev. 290.

What Refusal to pay a reasonable Fine, is a Forfeiture of a Copyhold Estate.

It is not a Refusal upon a dubious Matter that shall forfeit a Copyhold Estate; but it must be an obstinate and wilful Refusal. 3 Lev. 308.

Recovery suffered by Tenant for Life, a Forfeiture to him in Remainder.

How a Lease for Years is to be forfeited for Non-Payment of Rent.

Not paid as the Lease requires, yet there is no Forfeiture to be taken, if there was not an actual and legal Demand of the Rent made by the Lessor, and Entry after that: For the Law doth not

A Demand and Entry. favour defeating of Estates; and it cannot also so well appear, that there was an actual Failure of Payment.

Where Forfeitures for a Condition broken, shall not bind.

any Compensation made for it. 2 Ventr. 352. See 1 Mod. from 300, to the End.

An Arch-Deacon for Money grants his Office of Register: This is an Office within the Statute of 5 & 6 Ed. 6. cap. 16. and forfeited to the King, not to the Bishop. 3 Lev. 289.

Where a Statute gives a Forfeiture generally, the Forfeiture is intended to be given to the King: But

Where an Office is forfeited to the King, he may grant it without Office found; because no Estate or Freehold is divested: But the Office

A Copyhold Fine was assis'd and appointed to be paid, and was a reasonable Fine, and demanded of the Party, who refused to pay it, and so forfeited his Copyhold. 3 Lev. 252.

A Recovery suffered by Tenant for Life, is a Forfeiture to him in Remainder. 1 Rep. 15. a. b.

If a Lease be so made, that it is to be forfeited if the Rent reserved in the Lease be not paid as the Lease doth provide; although the Rent be

not paid as the Lease requires, yet there is no Forfeiture to be taken, if there was not an actual and legal Demand of the Rent made by the Lessor, and Entry after that: For the Law doth not

favour defeating of Estates; and it cannot also so well appear, that there was an actual Failure of Payment.

It is a standing Rule in Equity, That a Forfeiture for a Condition broken, shall not bind where the Thing may be done afterwards, or

any Compensation made for it. 2 Ventr. 352. See 1 Mod. from 300, to the End.

Where



## Forfeiture.

467

Where there is a Devise over to  
a Third Person after a Forfeiture,  
Forfeitures are in such Cases general-  
ly binding. *Ibid.* and 1 Mod. 300,  
301, &c.

Where they are general-  
ly binding.

H h 2

Frán=

# Franchise.

Franchise, See { First Part 315.  
Prescription.  
Duo Warranto.  
Waif.  
Wreck.

A Franchise, what it is.

**A** Franchise Royal, is where the King grants to one and his Heirs that he shall be quit of Toll; or grants Weodands, or Bona & Catalla felonum & fugitivorum, and the like.

What Franchises must be claimed by Grant, and what by Prescription.

See what Franchises must be claimed by Grant, and what by Prescription. 9 Rep. 27. b.

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# Fieri Facias.

Fieri Facias, See { First Part.  
Execution.  
Judgment.  
Return of Writs.  
Sheriff.

**A** Fieri Facias, is a Judicial Writ, and lies where a Man recovers Debt or Damages in any of the King's Courts; by which Writ, the Sheriff is commanded that he levy the Debt and Damages of the Goods of the Defendant, &c. Note, This must be sued out within a Year and a Day after the Judgment, which if it be not, then the Judgment must be revived by Sci. Fa.

*A Fieri Facias, what it is.*

The Sheriff may sell the Good upon a *Fieri Facias*, and take the Money, but he cannot take the Money upon a *Ca. Sa.* because that Writ doth not warrant him to do it. *Lutw.* 588, 589.

Sheriff may sell Goods upon a *Fi. Fa.*

But cannot take the Money upon a *Ca. Sa.*

The Sheriff cannot deliver the Goods by him taken in Execution to the Plaintiff, in Satisfaction of his Debt: Because his Authority is to sell the Goods. *Lutw.* 589.

Sheriff cannot deliver to the Plaintiff the Goods taken upon a *Fi. Fa.*

By the Statute of *Frauds and Perjuries*, the Sheriff must endorse the Day that the *Fieri Facias* was delivered to him, for from that Day the Goods are bound: So that if another *Fi. Fa.* comes afterwards, or the Defendant dies afterwards, and before the Return, yet that first Writ shall be first executed and satisfied.

Sheriff must endorse the Day on the *Fi. Fa.* when he received it.

*Stat. 29 Ed. 2. cap. 3.*



The Clause of the Stat.  
29 Ca. 2. rap. 3.

Time it shall be delivered to the Sheriff, Under Sheriff or Coroners, to be executed; which said Officers, their Deputies and Agents, shall, upon the Receipt thereof, without Fee, endorse upon the Back thereof the Day of the Month, and Year,

29 Ca. 2. rap. 3.

How the Sheriff is to  
sell a Term.

Sale is void; because there is no such Term. But notwithstanding this false Recital, if the Sheriff had sold all the Interest that the Defendant had in the Land, there the Sale had been good. 4 Rep. 74.

A general Recital good.

No Writ of *Fieri Facias*, or other Execution, shall bind the Property of the Goods, against whom such Writ of Execution is sued, but from the

where, upon a *Fi. Fa.* the Sheriff reciting the Defendant's Term, recites it falsely, and so sells it, the

The Sheriff reciting, that the Defendant had a Term of divers Years yet to come, sold it upon a *Fi. Fa.* and so. *Ibid.*

Fees.

# Fees.

Fees, See { First Part 315.  
Endicements.  
Sheriff.

**T**HE Statute of 29 Elix. cap. 4. which gives Fees to the Sheriffs, doth only extend to their executing of Writs of Execution in Counties, and not Cities; and there they are allowed 12*d.* in the Pound for the first

The Statute which gives Fees, extends only to Executions in Counties.

29 Elix. cap. 4.

100*l.* and 6*d.* in every Hundred afterwards: But then they ought to pay their own Bailiffs out of their Pondage-Money for their Pains. But of late, the Sheriffs of Cities do demand the same as Sheriffs of Counties have: *And I have heard they have recovered it.*

**Note,** The Statute only says, That they may take the above-mentioned Sums.

H h 4

Aclo

# Felo de se,

Felo de se, See } Deodands.  
Forfeiture.

A *Felo de se*, what.

A *Felo de se*, is one who lays violent Hands upon himself, and is the Occasion of his own untimely Death.

A Coroner's Inquest traversable, and how.

A Coroner's Inquest may be travers'd by an Executor upon the finding of a *Felo de se*, but cannot be travers'd upon a *Fugam Fecit*: Because a Coroner's Inquest finding of a Man *Felo de se*, is traversable. 2 Lev. 152.

Goods forfeited before Inquisition.

Goods of a *Felo de se*, are forfeited before Inquisition, viz. immediately upon committing of the Fact. 1 Lev. 8.

Why the King shall have the Goods of a *Felo de se*.

The Reason that the King shall have the Goods of a *Felo de se*, as well Leases as others, is, because of the Loss of a Subject, and for a Breach of the Peace. *Dame Hales's Case*, 1 Plow. 261.

Goods of a *Felo de se* cannot be claimed by Prescription.

The Goods of a *Felo de se* cannot be claimed by Prescription, nor are forfeited, until found of Record: Justices of Oyer and Terminer, and all others who have Power to enquire of Felonies (in case that they be so secretly buried that the Coroner cannot have the View), may take a Presentment of this, for it is Felony; and this shall entitle the King to the Goods. 5 Rep. 110.

Justices may take a Presentment of the Felony.

Deodands, what.

Deodands, are Goods which occasion the Death of Man by Misadventure, and are not forfeited until found of Record, and cannot be claimed by Prescription: And the Jury, who find the Death by such Misadventure, ought to find

find and appraise the Deodands also, *Omnia que movent ad mortem sunt Deodanda*.—5 Rep. 110. b.

**Felo de se** is no Murder within the Exception of Murder in a general Pardon. *Ibidem*.

Altho' there can be no *Melius Inquirendum*, yet the Court may order an Indictment to be against the *Felo de se*; and if that be found, his Goods shall be forfeited.

Is not Murder within the Exception of a general Pardon.

Where his Goods shall be forfeited upon an Indictment.

**Felon,**



# Felon, and Felony,

Felon, and Felony, See

First Part 316.

Accessory.

Burglary.

Due and Cry.

Felony, what it is.

**F**ELONY, is a general Term which comprehends divers heinous Offences, for which the Offenders ought to suffer Death, and lose their Goods and Lands.

The Punishment of Felony, what.

The Punishment of Felony, is, First, To lose his Life.

2dly, In the odious Manner of being hanged between Heaven and Earth, as unworthy of both.

3dly, He shall lose his Blood as to his Ancestry; for his Blood is corrupted, and he hath neither Heir nor Posterity.

4thly, He loseth his Goods.

5thly, His Lands, and in such Case the King shall have *Annum diem & Vastum*, to the Intent that his Wife and Children be cast out of his House, his House pulled down, his Trees rooted up, his Meadows plowed up, and all that he had for his Comfort or Delight, destroyed. 4 Rep. 124.

*Se Defendendo & per Infortunium*, Felony; and forfeits Goods.

Where a Man kills another in his own Defence, or *per Infortunium*, it is Felony; for which, he forfeits his Goods. 5 Rep. 91. But he may sue out his Pardon of Course.

*Bona & Catalla in Exigendo p'sit* when and what forfeited.

*Bona & Catalla in Exigendo p'sit* is when any one is indicted or appealed of Felony, and he absents himself so long that he is outlawed (by

this withdrawing of himself, which is a Flight in Law); he forfeits all his Goods and Chattels which he had at the Time of the Exigent awarded, although he renders himself upon the Exigent, and be afterwards found not Guilty. 5 Rep. 110, 111.

It is Felony to personate a Bail, by the Stat. of 21 Jac. cap. 26.

To personate Bail:

21 Jac. cap. 26.

By the Stat. of 1 Anna, Sess. 2. cap. 9. it is enacted, That it shall be lawful to prosecute any Person for buying of stolen Goods, knowing them to be stolen, for a Misdemeanor, and to be punished by Fine and Im-

What Punishment for buying of stolen Goods.

Stat. 1 Anna, Sess. 2. cap. 9.

prisonment, although the Principal shall not be convicted of the said Felony: But if the Principal shall afterwards be acquitted, then the other Person shall be excused. See Title Principal and Accessory.

It is by a Stat. made 10 & 11 W. 3.

cap. 23. enacted, That every Person who shall apprehend any Person guilty of the Felonies (which see in Title Burglary in this Book) and shall prosecute them till Conviction, they shall

The Reward for the apprehending of a Felon or Burglar.

Stat. 10 & 11 W. 3. cap. 23.

then, without Fee or Reward, have a Certificate thereof, under the Hand of the Judge before whom the same was tried, certifying the Place and Discoveror;

and if any Dispute shall arise, the Judge, before whom the Tryal was, may appoint the Certificate into Shares to be divided amongst them; which Certificate may be but once assigned over, and whosoever shall have it, shall be discharged from all Parish and Ward-Offices where such Felony was committed.

The Judge to appoint the Certificates.

To be discharged of all Parish Duties.

That in case any Person be slain in the endeavouring to apprehend such Felon, then his Executors or Administrators shall have such Certificate, without Fee or Reward.

The Executors or Administrators of any Person kill'd, shall have such Certificate.

That all Persons who shall be convicted of any Theft or Larceny, and shall have the Benefit of the Clergy allowed them, or ought to be burnt in the Hand; instead of being burnt in the Hand, shall be burnt in the Left Cheek near the Nose, in open Court, in the Judge's Presence.

Instead of burning in the Hand, to be burnt in the Left Cheek.

See Stat. of 3 & 4 W. & M. c. 9. entitled, An Act to take away Clergy from some Offenders, and to bring others to Punishment: Also about Ac-

Stat. 3 & 4 W. & M. cap. 9.

cessories

cessories and Buyers of stolen Goods, and Women convicted of Felony where Men have their Clergy.

40*l.* to be paid by the Sheriff for the taking of an Highway-Man.

By an Act made 4 & 5 W. & M. cap. 8, it is enacted, That every Person who shall take one or more Thieves or Robbers, and prosecute him or them, until he or they shall be convicted of any Robbery committed in or upon any Highway, Passage, Field, or open Place, shall have from the Sheriff of the County where such Robbery and Conviction shall be made or done, without paying any Fee for every Person so convicted, the Sum of 40*l.* within one Month after such Conviction and Demand, by tendering a Certificate to the Sheriff, under the Hand or Hands of the Judge or Justices, before whom such Felon or Felons shall be convicted: And if any Dispute shall arise touching the said Reward, the said Judge or Justices shall, by such Certificate, direct the Payment to be made amongst the Parties claiming the same, in such Share and Proportions, as to the said Judge or Justices shall seem just and reasonable.

If any Dispute, how to be determined.

The Penalty, if the Sheriff refuses Payment.

That such Sheriff making Default of Payment, shall forfeit to the Person or Persons double the Sum he ought to have paid, to be recovered by Action of Debr. See the Act at large.

A further Reward for the Discovery of Highway-Men.

No Felony to kill a Man in Defence of his Person or House.

Also, see in the same Statute, the Reward for Discoverors of Highway-Men: And a further Reward for the Apprehenders of Highway-men.

To kill a Felon or a Burglar, in the Defence of a Man's Person or House, is no Felony. *Hob.* 96.

Future Interest, See Surrender.

Fee=

# Fee-Simple.

See First Part 318.

**Fee-Simple**, is a lawful and pure Inheritance to hold to a Man and his Heirs for ever. Litt. Sect. 1. Co. Litt. 1. a.

An Estate made to one and his Heirs, during the Life of J. S. is but an Estate for Life, upon which a Remainder may depend by the Common Law. 1 Rep. 140. b.

A Devise to A. for Life, and to his Heirs, and for want of Heirs of him to B. (who is his Heir) this is an Estate-Tail in A. because the Words, *For want of Heirs of him*, is for want of Heirs of his Body. 3 Lev. 70, 71.

By a Devise of all my Tenant right Estate, a Fee-Simple passeth. 2 Lev.

Where in a Will are the Words, *All the rest of my Estate*, they carry a Fee-Simple, if the Devisor had a Fee-Simple therein. Show. 348.

A Remainder cannot be limited upon an Estate in Fee, because a Fee-Simple is an absolute and clear Estate, and nothing can come after it. Will. and Lord Berkley. 1 Plow.

A descendable Estate for Life, what.

Where in a Will the Words, *and for want of Heirs of him*, make an Estate-Tail.

By a Devise of all my Tenant right Estate, what passeth.

*All the rest of my Estate*, in a Will, make a Fee-Simple.

A Remainder cannot be limited upon an Estate in Fee.

Free=



# Freehold.

A Freehold, what it is.

**F**reehold, is an Estate that a Man hath in Lands or Profits to be taken in Fee-Simple, Fee-Tail for Life, in Dower, or as Tenant by the Curtesy; and under those, there are no Freeholds: A Freehold is called in Latin, Liberum Tenementum.

What is Part of the Freehold goes to the Heir.

Glass Windows, Part of the Freehold:

And so is Wainscot.

Whatsoever is Part of, or fix'd to the Freehold, goes to the Heir: Glass Windows, tho' set up by the Lessee, are Part of the House, and cannot be removed. 4 Rep. 63. b. 64. a.

If Wainscot be affix'd to the House, either by the Lessor or Lessee, is Parcel of the House; and there is no Difference in Law, whether it be fix'd with great or little Nails, or Scrues, or Irons thrust thro' the Posts or Walls, as hath been lately Invented: But if the Wainscot be by any of these Ways, or any otherwise fix'd to the Posts or Walls of the House, the Lessee cannot remove them; if he doth, he is punishable in an Action of Waste. 4 Rep. 64.

A Freehold cannot commence *in futuro*, Livery by Lessor, by Attorney.

But a Lease for Years may commence *in futuro*; but not a Lease for Life. 5 Rep. 94. See there much good Matter, as to Livery to Lessee, and where by Attorney.

What a Freehold in Law is.

till his actual Entry, but a Freehold in Law.

An Estate of Freehold, cannot by the Common Law commence *in futuro*; but must take presently in Possession, Reversion, or Remainder:

A Freehold in Law, is where a Man dies seized, and leaves a Son, to whom his Estate descends: He hath,

False

# False Imprisonment.

False Imprisonment, See

Dammages.  
Trespas.  
Arrest.

**False Imprisonment, is where**  
a Man is arrested and re-  
strained from his Liberty, with-  
out a legal Process, and due Course of Law; and for  
such illegal Usage, he shall recover his Dammages.

False Imprisonment,  
*Quid.*

In an Action of Trespas, Assault,  
and false Imprisonment, *quousque finem*  
*fecit septem Librarum*, upon Evidence  
at the Tryal, it appeared, That there  
was but 5 l. paid by the Plain-  
tiff to the Defendant for his Deliverance, which varied from  
the Declaration, that being 7 l. But the Chief Justice said, it  
was well enough; for the Action is for the Trespas, and  
False Imprisonment, and the other is only for Aggravation of  
Dammages. *Trin. 8 W. in C. B.*

False Imprisonment, *quo-*  
*usque finem fecit*, 10 l.  
And proved but 5 l. paid,  
and good.

In Trespas, Imprisonment, and  
taking of Goods, Three are found  
severally guilty, and several Dam-  
mages are found: Judgment shall be,  
*De melioribus dampnis*, if the Plaintiff  
pleaseth. 3 Lev. 324. See Title Dam-  
mages.

Three found severally  
guilty, and several Dam-  
mages.

How the Judgment to  
be.

In False Imprisonment, the De-  
fendant justifies by Writ, Warrant  
and Arrest, and traverses all other  
Times and Places. The Plaintiff re-  
plies *de son Tort*; and held naught, to put variety of Matters  
in Issue, as Matters of Record, and Matters of Fact, upon *de*  
*son Tort*. 3 Lev. 65.

Variety of Matter must  
not be put in Issue upon *de*  
*son Tort*.

In

How a Justification must  
be for taking of Goods  
upon a *Fi fa*.

*Facias*, until the Plaintiff had paid to the Defendant the Money for the Goods taken upon the *Fi. Fa.* to the Use of the Sheriff; and this was held to be naught: Because the Detainer ought to have been pleaded to be, until the now Plaintiff had paid the Money to the Use of the Plaintiff in the *Fieri Facias*. 2 Vent. 93. Lutw. 924.

In False Imprisonment  
against an Officer, he may  
plead not Guilty, and give  
the Special Matter in Evi-  
dence.

7 Jar. ca. 5.

21 Jar. ca. 12.

If an Officer, viz. Justice of the Peace, Constable, or other Parish Officer, be sued for False Imprisonment, he may plead the General Issue, and give the Special Matter in Evidence; and if he recovers, or the Plaintiff be nonsuited, he shall have his double Costs: By the Statute of 7 Jac. ca. 5. See 21 Jac. ca. 12.

Is an Action of Treason, and  
the Imprisonment, upon which  
the Plaintiff has a right to  
recover, is a crime, and the  
Plaintiff is entitled to his  
double Costs.

It is an Action of Treason, and  
the Imprisonment, upon which  
the Plaintiff has a right to  
recover, is a crime, and the  
Plaintiff is entitled to his  
double Costs.

It is an Action of Treason, and  
the Imprisonment, upon which  
the Plaintiff has a right to  
recover, is a crime, and the  
Plaintiff is entitled to his  
double Costs.

It is an Action of Treason, and  
the Imprisonment, upon which  
the Plaintiff has a right to  
recover, is a crime, and the  
Plaintiff is entitled to his  
double Costs.

It is an Action of Treason, and  
the Imprisonment, upon which  
the Plaintiff has a right to  
recover, is a crime, and the  
Plaintiff is entitled to his  
double Costs.

Feoff

# Feoffment.

See First Part 320.

**Feoffment**, is where a Man gives Lands, Houses, or other Corporeal Things, which are Inheritable to another in fee Simple, and thereof delivers Livery, Seisin, and Possession, it is a Feoffment.

A Feoffment, *Quid*. A

The Word Feoffment implies Livery. *Hob. 262.*

The Word Feoffment implies Livery.

A Man pleads *Feoffavit dedisse*, or *Dimisit*, for Life: This implies Livery, for without Livery, it is no Feoffment, Gift or Demise. *8 Rep. 82. b. Hob. 262. See Title Livery.*

The Pleading of a Feoffment, Gift or Demise, for Life.

A Feoffment being a Common Law Conveyance, and executed by Livery, makes a Transmutation of Estate: But a Conveyance by the Statute of Uses, as a Covenant to stand seized, &c. makes only a Transmutation of Possession, and not of Estate: Because no Estate passes by those Conveyances, but only an Use. *See 2 Lev. 77. and 1 Vent. 378.*

A Feoffment makes a Transmutation of Estate.

Covenant to stand seized, a Transmutation of Possession.

If Lessee for Life, and the Reversioner in Fee, make a Feoffment in Fee by Deed, each gives his Estate, viz. The Lessee his by Livery, and the Fee from him in Remainder. *6 Rep. 15. b.*

Tenant for Life, Reversioner in Fee, join in a Feoffment.

Tenant in Tail makes a Feoffment in Fee: The Inheritance of the Tail is not given to the Feoffee by the Feoffment, nor is he thereby Tenant in Tail: For none shall be Tenant in Tail, but he only who is comprehended in the Gift made by the Donor. *Plow. 562. a. But it gives away all the Estate the Feoffor had, Hob. 335.*

Feoffment by Tenant in Tail, what passeth.



Baron and Feme in Special Tail: Baron makes a Feoffment; Feme survived, and died before Entry, it is a Discontinuance.

two Bodies, and not as Heir to one only: But if the Feme had entred, and recontinued the Estate-Tail, the Discontinuance had been purged, and the Estate-Tail reverted in the Feme. 8 Rep. 71, 72. a.

A Feoffment without Consideration, and says not to whose Use; it shall be to the Feoffor's Use.

or Recovery, where no Uses are declared.

The Commendation of a Feoffment.

therefore best to be remembered; and also for that it clears all Disseisins, Abatements, Intrusions, and other wrongful or defeazable Estates, where the Entry of the Feoffor is lawful, which neither Fine, Recovery, nor Bargain and Sale, doth. Co. Lit. 9. a.

Foundation, See First Part 321.

Fiction of Law, See First Part 321.

Baron and Feme, Tenants in Special Tail; Baron makes a Feoffment and dies, Feme survived, and before Entry died. This is a Discontinuance at the Common Law to the Issue, who ought to claim as Heir of their

A Feoffment to a Man and his Heirs, without Consideration, and says not to whose Use: This shall be to the Use of the Feoffor and his Heirs. So likewise it is in the case of a Fine

A Feoffment is the most ancient and necessary Conveyance, both for that it is solemn and publick, and

**Frauds,**

# Frauds,

## See First Part.

**T**he Statute of 13 *Eliz. ca. 5.* extends to fraudulent Conveyances to defraud Creditors: And the Statute of 27 *Eliz. ca. 4.* extends to fraudulent Conveyances to defraud Purchasers. *Mich. 9 W. B. R.*

**Where** a Man makes a fraudulent Conveyance, and he, or his Son after his Death, (which Son knew not of it) sells the Land: The Vendee shall avoid it as Fraudulent. *6 Rep. 27. a. b.*

**Where** a Man privately makes an Estate to the Use of his Wife for a Jointure, by Fraud, to defraud a Purchaser to whom he intended to sell: If in such case the Fraud be proved, or confels'd in Pleading, the Purchaser shall avoid such Estate. *6 Rep. 73.*

**A Feme Covert** joins in the Alienation of her Jointure, and hath a new Deed of Settlement of other Lands dated the same Day: This is not Fraudulent against a Purchaser; for the old Settlement being destroyed, and a new One made the same Day, it shall be presumed, that there was an Agreement to make the new Settlement upon the Wife's parting with the old. *2 Lev. 70, 71.*

**See** several Badges of a Fraudulent Conveyance. *2 Lev. 146, 147.*

**A Voluntary Lease** for 500 Years, made good by Money being paid upon the Assignment of it. *3 Lev. 388.*

What fraudulent Conveyances extend to 27 *El. ca. 4.* and 13 *El. ca. 5.*

Fraudulent Conveyance made by the Father, and the Lands sold by the Son.

A private Jointure to a Wife to defraud a Purchaser, shall be Fraudulent.

What shall be a Fraudulent Conveyance, and what not.

Badges of Fraud.

Where a voluntary Lease was made good by Assignment.

An Act to relieve Creditors against fraudulent Devises.

3 & 4 Ed. 3. ca. 14.

Frauds and Perjuries.

29 Ca. 2. ca. 3.

The several Marks and Badges of Fraud.

An Act for Relief of Creditors against fraudulent Devises. See Title Devise, and Title Heir. Stat. 3 & 4 W. & M. cap. 14.

For the Statute of Frauds and Perjuries, made 29 Ca. 2. cap. 3. See Title Assumpsit.

The several Marks of Fraud in the Grant of Goods:

I. If it be General, without Exception of his Apparel, or some Things of Necessity.

II. If the Donor continues in Possession of the Goods, and uses them.

III. If the Deed be made in Secret.

IV. If there be a Trust between the Parties.

V. If made pending the Action.

These are all Badges of Fraud, altho' made for a just and true Debt. *Twine's Case.* 3 Rep. 80. b.

How to make a good Bargain and Sale of Goods.

Debt, let it be publickly done before Neighbours.

Also let the Goods be appraised by honest Men, at the true Value, and take a Grant of them in Particular for Satisfaction of your Debt.

Also take them into your Possession immediately after the Execution of the Deed. 3 Rep. 80, 81.

What Grants are within the Proviso of 13 Ed. 1. ca. 5.

And what not.

implied; so that a Grant made upon good Consideration, unless it be also *Bona Fide*, is not within the Proviso; so a Grant made *Bona Fide*, except upon good Consideration, is not within the Proviso. 3 Rep. 81. b. 82. a.

What voluntary Conveyances are good, and what not.

throughout. 3 Rep. 80. to 83. b.

Therefore says the Lord Coke, If any Person (indebted to others) grants any Goods in Satisfaction of a

A Valuable Consideration is a good Consideration within the Proviso of the Act of 13 Eliz. ca. 5. And a Grant *Bona Fide*, is a Grant made without any Trust either expressed or

What voluntary Conveyances are good, and what not, in case of Creditors and Purchasers, for valuable Considerations. See *Twine's Case*

The Statute of 27 *Elix. ca. 4.* hath made all voluntary Deeds, with Power of Revocation as to Purchasors in equal Degree with Conveyances, made by Fraud and Covin to defraud Purchasors. 3 *Rep. 83.*

By the Common Law, an Estate made by Fraud shall be avoided only by him who hath a former Right, Title, Interest, Debt, or Demand. 3 *Rep. 83.*

A Consideration of natural Love and Affection, is a good Consideration, intended by the Stat. of the 27 *Elix. ca. 4.* For valuable Considerations, are only good Considerations within the Act. 3 *Rep. 43.*

Where Fraud or Covin is not expressly averred, it shall not be presumed. 10 *Rep. 56. a.* Neither shall the Court adjudge it to be so, unless expressly found by the Jury. 10 *Rep. 56. b.*

What Deeds are fraudulent, and what not, in Case of Purchasors of Land. See *Twine's Case.*

Where Lands are twice Mortgaged without Notice, or Mortgages made after a Judgment, Statute, or Recognizance. See *Title Mortgage*; and the Stat. of 4 & 5 *W. & M. ca. 16.*

Voluntary Deeds, with Revocation, fraudulent. 27 *El. ca. 4.*

Fraud and Covin to de-

Who shall avoid an Estate made by Fraud.

Natural Love and Affection, a good Consideration.

27 *Eliz. ca. 4.*

Covin not presumed, unless averred.

Must be expressly found by the Jury.

What Deeds are fraudulent, and what not, as to Purchasors.

Fraud in Mortgaging of Lands twice.

4 & 5 *W. & M. rap. 16.*



# Gavelkind.

See First Part 321.

What Gavelkind Tenure is.

**G**avelkind, is a Custom annexed unto, and going with Lands in Kent, called Gavelkind Lands, holden by Ancient Socage Tenure, and is dividable between the Heirs Male; and the Heir of Fifteen Years may give and sell his Land, and shall inherit, tho' his Father be hanged for Felony, and the Wife shall have the Dower for her Dowry, &c.

They must be found to be Gavelkind.

A Rent shall descend, as the Land doth.

Dividable amongst Brothers.

ther dies without Issue, *Co. Lit. 140. a, b.*

Tenant by Courtesie without Issue.

How several Lands in Kent came to be Disgavelled.

31 H. 8. cap. 3.

Custom, divers ancient Families, after a few Descents, came to little or nothing. *Co. Lit. 140. b.*

Unless Lands in Kent are particularly found to be Gavelkind, the Court shall not intend them to be so. *Lutw. 754. 755.*

A Kent out of Gavelkind Lands, shall descend in Gavelkind as the Lands do. 2 *Leo. 87.*

And as the Estate is upon the Death of the Father dividable amongst all his Sons; so also when one Brother all the other Brethren shall inherit.

Also, by the Custom of Gavelkind, the Husband shall be Tenant by the Courtesie without Issue. *Co. Lit. 111. a.*

Now by the Statute of 31 H. 8. cap. 3. a great Part of Kent is made descendable to the eldest Son, according to the Course of the Common Law; for that, by Means of that

**Per Hales, Chief Justice, Gavelkind**  
Law is the Law of *Kent*, and is never  
pleaded, but presumed. 1 *Mod.* 98.

By the Acts of Parliament 31 H. 8.  
cap. 3. and 2 E. 6. (a Private Act)  
whereby Gavelkind Lands are made  
Discendable, as Lands at Common  
Law. Gavelkind Lands do not lose  
any other of the Qualities or Customs

appertaining to them; for it was not the Design of either of  
those Acts to divest those Lands of their former Privileges,  
which were not expressly altered by the Letter of those Laws;  
else instead of a Benefit it would be the Loss of their former  
Privileges. *Hard.* 325.

Gavelkind Law, is the  
Law of *Kent*.

How far the Privileges  
of it are altered by the  
Statutes, and where not.

31 H. 8. cap. 3.  
2 & 3 E. 6.

# Guardian.

Guardian, See First Part 322.  
Account.

A Guardian in Socage.

Age of Fourteen Years, and thereof must give an Account to him. See *Lit. lib. 2. cap. 4, 5.* But now, since the Court of

12 Car. 2. cap. 24.  
Sect. 8.

A Guardianship of a Child may be devised.

Copyholder cannot dispose of his Children by  
12 Car. 2. cap. 24.

What Power the Lord hath to grant a Guardianship.

Where the Spiritual Court may appoint Guardians.

Account lies against Executors or Administrators of Guardians.

4 & 5 Annæ.

How it is, when an Infant and another Executor sues, or is sued.

A Guardian in Socage, hath the Profits of the Lands to the Use of the Heir until he accomplish the

Age of Twenty one Years, or under it. Wards was put down, there is Power given by a Clause, in the Statute of 12 Car. 2. cap. 24. Sect. 8. to Parents, to dispose of their Children as they shall think fit, until they come to the

A Copyholder is not within the Statute of 12 Car. 2. cap. 24. to dispose of the Custody of his Children, for that belongs to the Lord or others, according to the Custom of the Manor. 3 Lev. 395.

A Lord of a Mannor hath no Power by the Common-Law, or without a particular Custom, to grant the Guardianship of an Infant Copyholder. *Lutw. 1190.*

The Spiritual Court may appoint Guardians for Infants who have only Personal Estates. 2 Lev. 162. 217.

An Action of Account lies against the Executors or Administrators of any Guardian, Bailiff, and Receiver, per Stat. 4 & 5 Annæ. Vide Title Account.

An Infant, and another Executor of full Age, may sue by Attorney; but if sued, the Infant must appear, and plead by Guardian. 1 Lev. 299. 181.

Husband

Husband and Wife are sued, the Wife is under Age; she must appear by Guardian, otherwise it is Error.

2 Lev. 38. 1 Vent. 185.

When the Party is out of the Wardship of his Guardian in Socage, he may then in Court, or before a Judge, chuse his Guardian.

The Admission to sue by *Prochein amie* ought to be entred upon Record, but it must be first entred in the Clerk of the Rules Book, which is a Warrant to enter it upon Record, and it may be entred upon the Issue Roll.

A Writ of Error was brought to reverse a Judgment in the Common Pleas, in an Action brought by an Infant in Trespass, where he sets forth in his Declaration, his Admission to sue *per Proximum Amicum*: And upon a *Certiorari* prayed, it was certified, That there was no Admission entred upon the Roll: But it was afterwards, by a Rule of Court, ordered to be entred, and another *Certiorari* was prayed and granted, and the Admission certified; and the Judgment was affirmed. And it was said by the Court, That they will grant a New *Certiorari* to affirm, not to reverse a Judgment. *Read and Waldron. Hill. 6 W. Rot. 249, B. R.*

A Man devises to his Wife the Education of his Daughter, with her Portion and Profits of the Lands to her own Use, without Account, until the Daughter comes to Eighteen; provided, she pay the Quit-Rents, and keep the Daughter at School. The Wife took upon her the Execution of the Will, and married, and died, the Daughter being but Fourteen. This is a Term given to the Wife, which accrues to the Husband.

*Hob. 285. But see now the Statute 12 Car. 2. cap. 24. Sect. 8.*

The Mother, Guardian in Socage to her Son of Five Years of Age, marries, she and her Husband lease for Eight Years; the Husband dies, the Wife enters and good. *Osborn and Carden. 1 Plow. 293.*

The Wife under Age must appear by Guardian.

Where an Infant may chuse his Guardian,

How the Admission by *Prochein amie* to be.

It is Error to sue *per Prochein amie*, without an Admittance by the Court.

Where the Wife, Guardian to an Infant, dies, leaving her Husband.

12 Car. 2. cap. 24. Sect. 8.

The Mother, Guardian in Socage, marries, and leases for Years, the Husband dies, it is void.



The Executor of a Guardian shall not be Guardian.

Husband shall not be Guardian upon the Wife's Death.

An Action lies against a Guardian who mispleads.

Where there may be a new Guardian.

Waste, a Forfeiture of the Guardianship.

Where a Guardian shall give Security.

If Guardian in Socage dies, his Executor shall not be Guardian. *Ibidem.*

If a Woman Guardian marries, and dies, her Husband shall not have the Guardianship. *Ibidem* 293.

Where a Guardian mispleads, and loses thereby, an Action lies against him. *Westcot and Colne, Poph. 130. Cro. Jac. 240. See Darv. 603.*

Any Man may become Guardian to an Infant against his Father, to prevent his committing of Waste: Also Waste is by Law a Forfeiture of the Father's Guardianship. *Hard. 96.*

Where there hath been some Doubt of the Sufficiency of the Guardian in Socage, the Chancery hath made him give good Security. 2 *Mod. 177.*

# Game and Gaming.

**T**HE Statute of 16 Car. 2. cap. 7. gives treble Damages against any Person or Persons who shall cheat at Cards, Dice, Horse-Race, &c. And also says, That if any Person shall play at any of the said Games upon Tick, and not for ready Money, and shall lose 100 l. more upon Tick, his Security taken for it shall be void, and the Winner shall forfeit treble the Value of the Money won.

Punishment for false Gaming: 16 Car. 2. cap. 7.

Gaming at several Meetings, whether within the Statute of 16 Car. 2. cap. 7. or not. See 2 Mod. 54.

Gaming at several Meetings: 16 Car. 2. cap. 7.

A Match was lost and delivered, and afterwards the same Party lost 100 l. upon Tick at one Sitting, and a Bond was given for the 100 l. and held to be good; because the Statute doth not restrain Playing for ready Money, but such Playing only as put People in Debt. 1 Lev. 244.

The Statute extends not to playing for ready Money.

Debt was brought for 100 l. upon a Horse-Match; and in the same Articles, for another 100 l. at the same time was Articled to be Run for, if the Plaintiff required it. This is within the Statute of Gaming. 2 Lev. 94. 1 Ventr. 253.

For two several 100 l.'s upon a Horse-Race.

All *Indebitatus* doth not lie for Money won at Play: But a Special Action upon the Case will lie. 3 Lev. 118. See 2 Ventr. 175. where the Judges differed; but adjudged since, it will not lie upon a general *Indebitatus*.

Assumpsit lies not for Money won at Play, but it must be laid Specially.

Gaming is not within the Statute, where the Security is given for the Money to a Third Person, not being Privy to the Matter, or knowing that it was won at play. 2 Mod. 297.

Security given for Money lost without Privy, is good.

See

Acts against destroying  
the Game of the Kingdom.  
4 & 5 W. & M. cap. 23.

Where a *Certiorari* shall  
be allowed to remove any  
Conviction upon this Act.

whom such Conviction shall be made, shall, before the Allow-  
ance of such Writ, become bound to  
the Person prosecuting in the Sum of  
50 l. with such Sureties as the Justice

To become bound in  
Sureties in 50 l.

or Justices of the Peace, before whom such Offender was com-  
mitted, shall think fit, with Condition  
to pay to the Prosecutor within one  
Month after such Conviction confirm'd, or *Procedendo* granted,  
their full Costs and Charges, to be ascertained upon their Oaths;  
and in Default thereof, it shall be lawful for the said Justice  
or Justices, and others, to proceed to the due Execution of  
such Conviction, as if no *Certiorari* had been allowed.

See an Act made 4 & 5 W. & M.  
cap. 23. Entituled, *An Act for the more  
easy Discovery and Conviction of such as  
shall Destroy the Game of this Kingdom.*

No *Certiorari* shall be allowed to  
remove any Conviction, or other Pro-  
ceedings, concerning any Matter in  
this Act; unless the Party, against

to pay to the Prosecutor within one  
Month after such Conviction confirm'd, or *Procedendo* granted,  
their full Costs and Charges, to be ascertained upon their Oaths;  
and in Default thereof, it shall be lawful for the said Justice  
or Justices, and others, to proceed to the due Execution of  
such Conviction, as if no *Certiorari* had been allowed.

**Grants.**

# Grants.

Deeds.  
Election.  
Grants, See King, and Kings Grants.  
Non obstante.  
Offices.

**The Words, Give and Grant, in a Deed (of Things which lie in Grant, as Abbotsions, Rents, Commons, Reberfions, &c.) will amount unto a Grant, a Gift, a Release, a Confirmation or Surrender at the Election of the Party, and may be pleaded as a Grant, as a Release, or as a Confirmation at his Election. Co. Lit. 301. b.**

What the Words, *Give and Grant*, do amount to.

**By the Statute 4 & 5 Anne, cap. all Grants and Conveyances hereafter to be made by Fine, or otherwise, of any Mannors or Rents, or of the Reversion or Remainder of any Messuages or Lands, shall be good and effectual without the Attornment of the Tenants of any such Mannors, or of the Lands, out of which such Rents shall be issuing, or of the particular Tenant, upon whose Estate any such Reversions or Remainders shall and may be expectant or depending, as if Attornment had been made.**

All Grants and Conveyances by Fine, or otherwise, of any Reversion or Remainder, shall be good without Attornment:

4 & 5 Anne.

**Note, Notice must be given to the Tenant of such Grant.**

Notice must be given to the Tenant of such Grant.

**In every Gift of Lands or Goods which a Man makes, there ought to be a Donor, Donee, and Thing granted. 1 Plow. 435. 2 Plow. 563.**

Donor, Donee, and Thing granted in every Grant.

**A Grant of an Annuity to a Lawyer, or a Physician, for the Life of the Grantee, *pro Concilio impendendo* to the Grantor, and the Grantor dies,**

A grant of an Annuity, *pro Concilio impendendo*. When it determines.

the



the Annuity doth not cease, but shall continue for the Life of the Grantee. *Sir Tho. Wroth's Case.* 2 *Plow.* 456. b. 1 *Plow.* 378. to 382.

Debt lies for Arrears of an Annuity or Rent-charge determined.

Annuity being determined, he hath no other Remedy. 7 *Rep.* 39. b.

Trees granted in a Wood, may be cut down, and carried away.

Where a Grant shall be restrained to a Vill, and where not.

lie in D. Here, because the Grant is general, and restrained to a certain Vill, the Grantee shall have no Lands out of the Vill. 2 *Rep.* 33.

Where there is a Mistake of the Parish, how it shall be.

Parish, and held to be void. For altho' the first Certainty in the Tenure of B. was true; yet the last Certainty in the Parish of S. was false. 2 *Rep.* 33. a.

How Words in Grants shall be construed.

What passes by the Grant of all Trees.

An Interest for Years passes by a Grant of all his Lands:

So if he grants all other his Lands.

A Grant without Limitation of Estate, is good against a Common Person.

After an Annuity or Rent-Charge is determined, Debt lies for the Arrears, and the Person of the Tenant shall be charged; because the

If I grant you my Trees in my Wood, you may cut them down, and come with your Carts over my Land to carry them away. 11 *Rep.* 52. a. 4 *Rep.* 62. 5 *Rep.* 11.

The King, or a common Person, grants *Omnia illa Mesuagia in Tenura, A. B. scituata in W. nuper Priorat' de W. spectan.* and in truth the Lands

A By-Deed enrolled conveys all his Lands in the Tenure of B. in the Parish of S. whereas they were then in the Possession of B. but in another

Parish, and held to be void. For altho' the first Certainty in the Tenure of B. was true; yet the last Certainty in the Parish of S. was false. 2 *Rep.* 33. a.

Words in Grants shall be construed according to a reasonable and easy Sense, not to strain Things to what is unlikely and unusual. And therefore, by a Grant of all Woods and Trees, Apple-Trees will not pass. *Hob.* 304.

By a Grant of all his Lands, an Interest for Years will pass, because it is Land for the Time; so where a Man grants all other his Lands and Tenements. *Plow.* 424. a.

If a Common Person grants a Rent, or other Thing, that lies in Grant, without Limitation of any Estate; there by the Delivery of the

Deed only a Freehold passes, because the Grant of a common Person shall be taken most strongly against himself: But if the King grants a Rent without Limitation of any Estate, the Grant is void for Uncertainty, and the Grantee shall not be so much as Tenant at Will. *Day. R. 45. a.* Void as to the King.

**Good**

# Good Behaviour.

Good Behaviour, See } First Part 324.  
Justice of Peace.

Who shall be bound to  
the Good Behaviour.

Those who are of Ill Fame, or  
Common Disturbers of the  
Peace, or who are accused or gilty  
of Tippling in Ale-houses, Getting of Bastards, Com-  
mon Barretors, &c. Which see in *Nelson's Justice*, 78, 79, &c.  
may be required by one Justice of the Peace to enter in-  
to a Recognizance with Sureties, or without, to be of  
the Good Behaviour; and upon Refusal, may be com-  
mitted.

5 & 6 Ed. & W. cap. 13.  
Repeals Statute 10 Ed. 3.  
for giving Sureties after a  
Pardon.

An Act of Parliament was made,  
5 & 6 W. & M. cap. 13. to repeal the  
Statute of 10 Ed. 3. for finding of  
Sureties for the good Abearing of him  
or her that hath a Pardon.

Boys de son Fee, See } Abowry.  
Aid Pleaier.

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*The End of the First Volume.*

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The Author being absent from *London* at the Time of the Printing of this Book, several Mistakes have been made, which you will find corrected in the *Errata* following: And the Reader is hereby desired with his Pen to amend the Book accordingly.

### *The Errata to the End of the Letter F.*

**P**Age 17, line 34, for *prosequendam*, read *prosequendum*. p. 24, f. *Simulcum* in the several Places, r. *Simul cum*. p. 44, l. 4, f. 3 *Instr.* r. 3 *Institute*. p. 82, in the last Line but one, before *Parties*, r. *the*. p. 85, l. 11, f. *sua*, r. *suas*. p. 99, l. 12, instead of *for*, r. *or*. l. 14, after *She may*, r. *have*. p. 102, l. 4th before the last Line, *for*, or *Justices*, r. *before Justices*. p. 103, l. 14, after *if*, r. *in*. p. 105, l. 19, instead of *impleading*, r. *in pleading*. p. 111, l. 21, instead of *to short a Time*, r. *to a short Time*. p. 112, l. 23, f. *one Third of A*, r. *one Shilling of A*. l. 34, instead of *Term or for Tears*, r. *Termor*. p. 113, l. 8, f. *Nul, Tort, Disseisin*, r. *Nul Tort, Nul Disseisin*. p. 121, l. 8, f. *Condition of Estovers*, r. *Common of Estovers*. p. 128, l. 23, f. *Court*, r. *Count*. p. 143, l. 35, r. *for a Covert*, the Words, *for a Feme-Covert*. p. 162, l. 20, f. *Arrest or Deten*, r. *Arrest or Detention*. p. 195, l. 11, f. *without Limitation*, r. *or limited by Distress*. p. 207, l. 34, after the Word *Process*, r. *shall be allowed*. p. 230, l. 7, the Comma between the Words *Heir* and *only*, should be after the Word *only*, and not the Word *Heir*. p. 250, at the Bottom, and 251 at the Top, f. *Obligee*, r. *Obligor*. p. 281, l. 11, f. *Preference*, r. *Prescription*. p. 290, l. 1, f. *Constabularia*, r. *Constabulario*. p. 311, l. 20, after the Word *King*, r. *as*. p. 313, l. 20, after *demurs*, r. *generally*. p. 329, l. 4, after *Et*, r. *aliens*. p. 331, l. 30, f. *fraudulater*, r. *fraudulenter*. p. 346, l. 37, f. *Plaintiff*, r. *Plaintiff*. l. 41, f. *Custodiret*, r. *Custodivit*. p. 356, l. 28, f. *Judge*, r. *Jury*. p. 361, l. 1, after *legally*, r. *taken*. p. 362, l. 4, leave out the Word *used* at the End of the Line. p. 365, l. the last but one, f. *doth not create*, r. *doth create*. p. 319, l. 21, and 25, f. *Lessor*, r. *Lessee*. p. 417, l. 25, f. *recorded*, r. *recovered*. p. 429, l. 23, after *neither*, r. *Entry*. p. 444, l. 12, f. *Court*, r. *Count*. p. 446, l. 12, for *Execus* r. *excus*. p. 465, l. 32, f. *Peremptory*, r. *peremptorily*.

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